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ABSTRACT

The 16 papers in the first section of the Addenda to this proceedings are: (1) "Shipboard News: Nineteenth Century Handwritten Periodicals at Sea" (Roy Alden Atwood); (2) "The International Institutional Press Association, 1966-1968" (Constance Ledoux Book); (3) "44 Liquormart--A Prescription for Commercial Speech: Return to 'Virginia Pharmacy'" (Frances L. Collins and Timothy D. Smith); (4) "Sociocultural Influences on Advertising Seen from Gender-Role Portrayals: A Content Analysis of Chinese and U.S. Television Commercials from 1996" (Hong Cheng); (5) "Of Heathens and Heroines: Constructions of Gender and Empire in the Woman's Foreign Missionary Press, 1869-1895" (Janet M. Cramer); (6) "Mainstream Newspapers Coverage of the North American Free Trade Agreement, 1991-1996" (Ana-Jimena Vargas); (7) "Media Rights versus Community Interests in Canada and the United States: Explorations in Legislative and Judicial Balancing" (Vernon A. Keel); (8) "To Mourn, to Cheer, or to Fear? Three Different Chinese Perspectives on the Death of Deng Xiaoping" (Shiau-Ching Chou and Margaret E. Thompson); (9) "Media Recognition and Access to the Presidential Primary Ballot" (Karen M. Markin); (10) "A Model of Public Support for First Amendment Rights" (Jack M. McLeod; Mira Sotirovic; Zhongshi Guo; Kuang-Yu Huang); (11) "Virtual Meetings: Breakdown or Breakthrough in Participatory Government" (Susan Dente Ross); (12) "Humor as a Resource in Constructing Scientific Knowledge and Ignorance" (S. Holly Stocking); (13) "Effects of Alignment Advertisements: Brand Ads Containing Mention of Social Issues" (Toni Schmidt and Jacqueline C. Hitchon); (14) "Funding Alternatives for Electronic Access to Government Information" (David Danner and Paul W. Taylor); (15) "An Investigation of Colorism of Black Women in News" (Lillie M. Fears); and (16) "Computer-Assisted Reporting Resources in Newsrooms, 1994-96" (Bruce Garrison). Contains references and endnotes. (NKA)

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PROCEEDINGS OF THE ANNUAL MEETING OF THE ASSOCIATION FOR EDUCATION IN JOURNALISM AND MASS COMMUNICATION (80th, Chicago, ILlinois, July 30-August 2, 1997). ADDENDA I.

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Shipboard News

Nineteenth Century Handwritten Periodicals at Sea

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Shipboard News

Nineteenth Century Handwritten Periodicals at Sea

Since antiquity, the world's oceans have been abundant sources for food, highways for commerce, channels for communication, and canvases for stunning beauty. Behind all their advantages and appeal, however, these mysterious deserts of water have inspired great fear and dread of their immense and hostile power. Ancient myth and historical records alike seem to support the widely held supposition that ocean travel was--and remains--a slow and dangerous dance on the vast void of the deep.[1] However, more careful and systematic examination of the historical record suggests that travel on the Atlantic Ocean following the establishment of Britain's North American colonies was faster, more frequent, and safer than previously imagined.[2]

By the mid-18th century, the average peacetime passages from England to its North American colonies were five weeks (Newfoundland) to 12 weeks (Hudson Bay), and the passages from the colonies to England averaged three weeks (Newfoundland) to 14 weeks (Jamaica), depending on the season and

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[1] The biblical account of the Noahic flood tells how God, the Creator, used all the waters of the earth as an instrument of divine judgment against His sinful creatures: "On that day all the springs of the great deep burst forth, and the floodgates of the heavens were opened. And rain fell on the earth for forty days and forty nights. . . . Every living thing on the face of the earth was wiped out; men and animals and the creatures that move along the ground and the birds of the air were wiped from the earth." *The Holy Bible, New International Version* (London and Toronto: Hodder and Stoughton, 1984), Genesis 7:11-12, 23.

The Greek god of the sea, Poseidon, and the Roman god of water, Neptune, ruled the oceans with violence and vengeance, making the great waters of the known world terrifying instruments of destruction against wayward souls. See W. Burkert, *Greek Religion*, trans. W. Raffan (Oxford: Oxford University Press, 1985), and J. Boardman, J. Griffin, and Oswyn Murray, eds., *The Oxford History of the Classical World* (Oxford: Oxford University Press, 1986).

Even for people and cultures closely associated with the oceans, such as the Maori of the South Pacific and the Hawaiians, the vastness of the waters surrounding them embodied a sense of physical, psychological, historical, and spiritual distance. Following the "voyaging" or migration period of Hawaiian folklore, the notion of an original place or homeland was transformed into the concept of "Kahiki" or "invisible lands beyond the horizon. This came not only to mean "a great distance" and "great antiquity," but the point where the dome of the sky meets the border of the earth, or the port of entry into the heavens. See Marshall Sahlins, *Historical Metaphors and Mythical Realities: Structure in the Early History of the Sandwich Islands Kingdom* (Ann Arbor: University of Michigan Press, 1981), p. 16.

Popular recognition of the hostile power of the seas has been periodically reinforced by the great naval disasters of history, such as the sinking of the Chinese naval force attempting to invade Japan credited to the "wind of God" or kamikaze. Dread of the ocean's depths did not disappear when Vasco da Gama's first Portuguese vessels rounded Africa's Cape of Good Hope or when Columbus lived to tell of his trans-Atlantic voyage of discovery. Even though da Gama and Columbus launched four centuries of European naval exploration, the great political naval powers of the world were still regularly and sufficiently humbled by oceanic disasters. From the sinking of the Spanish Armada to more recent naval disasters such as the sinking of the Titanic to the violent hurricanes and typhoons that have thrashed coastal regions throughout the world, the oceans are universally respected for their lethal power. That power regularly mocks the boasts of human mastery (such as the claim that the Titanic was unsinkable) over the seas.

[2] Ian K. Steele, *The English Atlantic, 1675-1740: An Exploration of Communication and Community* (New York: Oxford University Press, 1986), pp. 5-18.

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conditions.[3] These times, when set in the context of early modern communication and the legitimate expectations of sojourners, were reasonable and occasionally remarkable. In a day when the fastest couriers could travel barely over 15 miles per hour on horseback,[4] a trip across the Atlantic could take as little time as a journey from the southern colonies to New England. Between 1675 and 1740 alone, the number of transatlantic voyages doubled, and the number of intercolonial runs tripled.[5] This increase in shipping frequency was due in part to a decrease in the physical and financial risks associated with earlier explorations of the "new world" and the unknown waters beyond Europe. By the late 1600s, reliable charts and maps of the Atlantic reduced the perils of ships running afoul on some unknown coastline. Scientific and technological developments also reduced the dangers of sea travel.[6] The sextant, invented in 1731 and commercially available by 1734, gave sailors a reliable tool to calculate their exact locations at sea. Sailors and scholars charted the Atlantic trade winds, calculated the direction and speed of the ocean currents, measured the seasonal changes of wind and weather, and invented warning devices to mark particularly dangerous coastal areas. By the end of the 17th century, several thousand Englishmen made their living on traders, fishing boats, slavers, whalers, privateers, and naval ships, and "they and their contemporaries regarded their work as unremarkable and unexceptional."[7] When the English evangelical preacher and founder of "Methodism" John Wesley accompanied James Olgethorpe to Georgia in 1735, he noted that his fear of the sea was both uncommon and unbecoming a Christian.[8] The mystique of the ocean's depths, and its attendant fear and dread, receded into the banality of routine and familiarity.

The Atlantic, by the 18th century, sustained a complex system of relatively safe, rapid, and reliable communication. Ships shuttled all kinds of goods, passengers, and news--letters and newspapers--between various ports of call across the wide expanses. Regular postal service by ship between

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[3] Ian K. Steele, *The English Atlantic*, p. 274.

[4] Ian K. Steele, *The English Atlantic*, pp. 5-7.

[5] Public Record Office, London, England, E 190 Series, port books, CO 33/13-16, 142/13, 14, 5/508-10, 5/144, 41/6, 5/858, cited in Ian K. Steele, *The English Atlantic*, p. 275, 281-318.

[6] Dava Sobel's fascinating new book, *Longitude: The True Story of a Lone Genius Who Solved the Greatest Scientific Problem of His Time* (New York: Walker, 1995), explains how John Harrison (1693-1776) solved the navigational enigma of longitudinal projection that was crucial to the accurate calculation of position on the open seas.

[7] Ian K. Steele, *The English Atlantic*, pp. 11; see also Madeleine Burnside and Rosemarie Robotham, *Spirits of the Passage: The Transatlantic Slave Trade in the Seventeenth Century* (New York: Simon and Schuster, 1997).

[8] Nehemiah Curnock, ed., *The Journal of the Reverend John Wesley* (London, 1909-1916), I, p. 435, cited in Ian K. Steele, *The English Atlantic*, p. 321.

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Massachusetts and London began in 1639, and intercolonial posts began by at least 1686.[9] The rise of newspapers in London also corresponded to the increase in Atlantic shipping. By early 1644 a dozen papers competed in London for readers, selling as many as 6,000 copies a week total or a rate of one copy for each 60 to 70 persons living in the greater London area.[10] By the end of the 17th century London printers were in firm control of printed English news, but various legal restrictions on printers and their presses encouraged the creation of popular manuscript newsletters which allowed more pointed discussion of political events. The close relationship between printers and postmasters, expanding commercial shipping, and increasing emigration to North America combined to encourage the transport of these printed papers and manuscript newsletters by ship from London to the far reaches of the Empire.[11] Sailing ships thus became both the official and unofficial means of distribution for official and unofficial news across the Atlantic and between the colonies. The London dateline regularly appeared in colonial papers with a degree of timeliness acceptable for the period (see Table 1).

Table 1
Age of London Datelines in Boston Papers
for Year Ending 22 April 1722

	Range	*Average*	*No. of Cases*
Boston News-letter	54-374 days	114.3 days	161
Boston Gazette	54-329 days	101.0 days	103

Sources: *Boston News-letter*, *Boston Gazette*, taken from Ian K. Steele, *The English Atlantic*, p. 306

As shipping on the Atlantic increased, news and letters not only made their way from port to port, but sailors frequently traded news and information with the crews and passengers of other ships encountered along the increasingly busy oceanic trade routes. Although ships could go days or weeks without encountering other crafts or sighting port, they were rarely out of touch with the latest

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[9] Howard Robinson, *The British Post Office: A History* (Princeton: Princeton University Press, 1948), pp. 22-50.

[10] Joseph Frank, *The Beginnings of the English Newspaper, 1620-1660* (Cambridge, Mass., 1961), pp 57-58, 146. London's population estimate of 400,000 in 1650 is from E. A. Wrigley, "A Simple Model of London's Importance in Changing English Society and Economy, 1650-1750," *Past and Present*, 37(1967), 44.

[11] J.R. Sutherland, "The Circulation of Newspapers and Literary Periodicals, 1700-1730," *The Library*, 4th ser., 15(1934), 111.

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developments along the sugar, rum, tobacco, and gold rush routes.[12] Extant ship logs provide only fleeting glimpses of mid-ocean encounters between vessels (it may be impossible to assess accurately the frequency or extent of contact between ships at sea), but the matter-of-factness of the records of such encounters suggests that contact was probably not uncommon. At the very least, ships certainly made contact at sea when answering distress signals or sharing the frustrations of the doldrums.[13]

Ships were more than just transportation over water. And they did more than just carry trade goods, passengers and news publications from port to port. They were, in fact, producers of news.

Handwritten Shipboard Periodicals

Nowhere is this more evident than with the publications produced on board ships in the 19th century. While some publications were printed on board, the preponderance of shipboard papers were handwritten.[14] The problem of handling type and printing paraphernalia aboard a rolling, heaving ship is well illustrated by experience of the Rev. Linville J. Hall, who sailed with the Hartford Union Mining and Trading Company aboard the Henry Lee out of New York heading for California gold in February 1849. "When the ship rocked or careened from the heavy swell, enduring the progress of a heavy blow," he noted in his daily journal, "the type in my composing stick would be scattered in all directions; at other times my galleys half filled with set up matter would go dancing across the room to the accompaniment of flying type."[15] Composing type and printing unsmudged copies no doubt would have been a challenge aboard the relatively small vessels of the 19th century.

Because of the problems of working printing presses on board ships, most of the logs, journals, diaries, and newspapers produced on board were handwritten. No one knows how many handwritten shipboard papers may have been published; only a few copies survive. Nonetheless, they represent yet another component in the extensive system of 19th century oceanic communication.

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[12] Ian K. Steele, *The English Atlantic*, pp. 21-110.

[13] William H. DeCosta, *Journal of the Passage of Ship Duxbury to San Francisco, Feb. 9-June 23 1849*, notes several "close encounters" with other vessels and being close enough to exchange information orally.

[14] Alan Finch, *Pens & Ems: Stories of Australizn Newspapers* (Adelaide: Rigby Limited,1965), pp. 62-63, tells of the **Moonta Herald and Northern Territory Gazette** (1869-1870) printed on board a surveyor ship, the Moonta, in two different sizes. Apparently, the type was rearranged and new layouts created for each printing. Whether this was done as a training exercise or an attempt to pass the time or for some other reason is not known.

[15] The Rev. Linville J. Hall, *Around the Horn in '49: Journal of the Hartford Union Mining and Trading Company* (Printed by L. J. Hall on board the Henry Lee, 1849).

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Eight handwritten shipboard papers are analyzed below. Five papers, **Barometer**, **The Emigrant**, **Flying Fish**, **The Petrel**, and **The Shark** were written on ships out of Boston, New Orleans, and Sydney enroute to the California gold fields between 1849 and 1851. The other three papers were published aboard British naval vessels. One was written by Royal Engineers enroute to Vancouver, B.C., via Cape Horn in 1858-1859. The other two were published by arctic explorers: **The Illustrated Arctic News**, issued on board *H.M.S. Resolute* off Alaska's Barrow Strait in 1850-1851 while searching for members of Sir John Franklin's ill-fated arctic expedition,[16] and the **New (*or North*) Georgia Gazette and Winter Chronicle**, published during Sir William Edward Parry's (1790-1855) search for a "Northwest Passage" through the Canadian arctic archipelago in 1819-20.[17]

Although the records of these extant shipboard papers are relatively thin and uneven, they demonstrate that the vast oceanic communication system in place by the 19th century included the production of news publications at sea. These shipboard periodicals certainly provided entertainment (not unlike many of their land-based contemporaries) for long and monotonous journeys, but they also chronicled the stories of dozens, sometimes hundreds, of passengers and crew (the equivalent population of many villages or towns of their day) and covered the events and activities on their floating community that imputed meaning, value, and significance to their odyssey. So while the settings and circumstances of these shipboard papers made them unusual, even a novelty, their roles and purposes varied little from those of their printed counterparts on shore.

The California Gold Rush Shipboard Papers

1. The Barometer

One of the first organized contingents to leave Boston for the California gold fields was the Boston and California Joint Mining and Trading Company. This group sailed from Boston aboard the Edward

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[16] Several arctic expeditions apparently published handwritten papers, but I have not yet located other extant copies or references beyond those cited here. If others do exist, the Scott Polar Research Institute, Cambridge, England, and the British Museum are the most likely depositories for such publications.

[17] This study is part of a larger, comprehensive examination of handwritten newspapers. Shipboard papers examined here represent only a handful of the hundreds identified so far in archives, libraries, bibliographies and histories.

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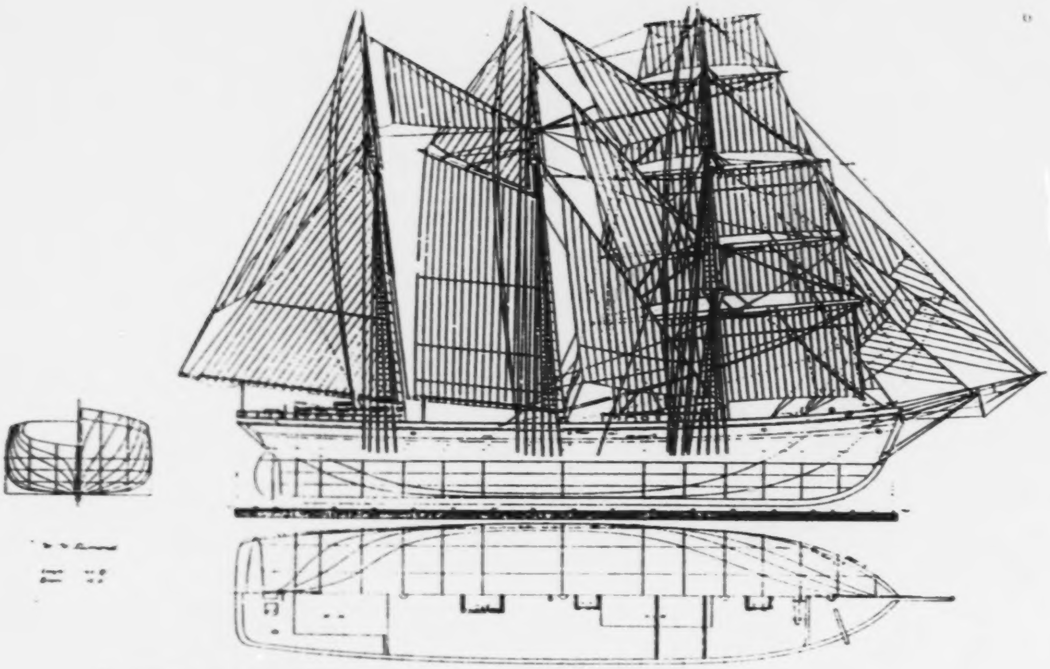

Barquentine W. H. DIMOND.

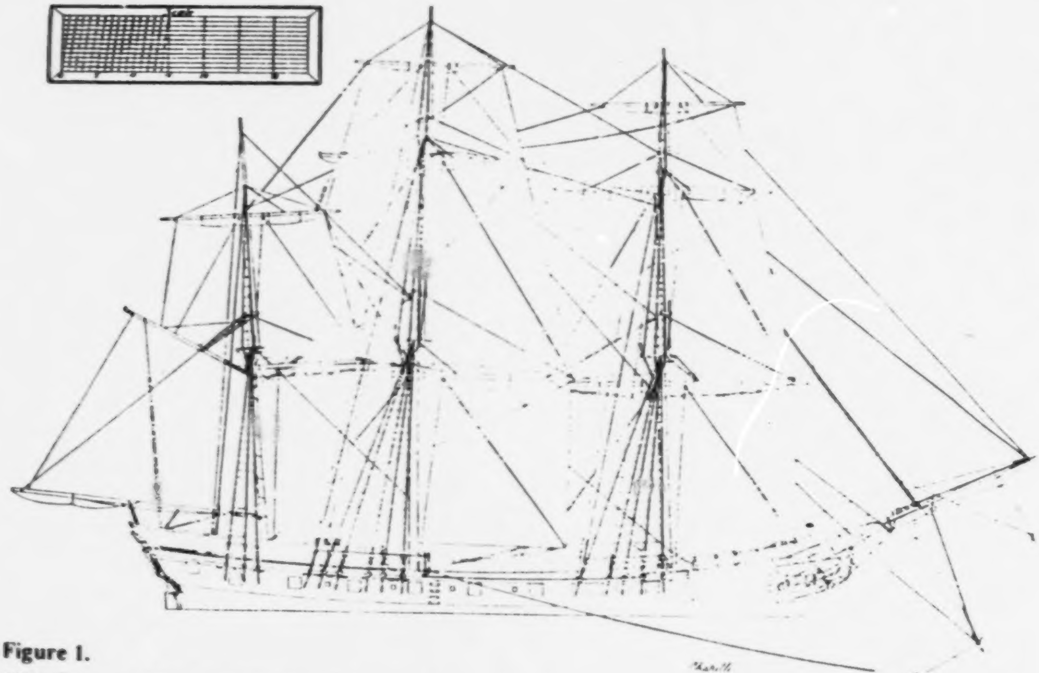

Figure 1.
19th Century Merchant Sailing Ships Similar to Those Used Enroute to the California Gold Fields

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Everett, a 700-ton "fast-ship" (or a "packet" ship or merchant clipper; similar to those shown in Figure 1) on January 13, 1849. The company of 150 men included eight sea captains, four doctors, a clergyman, a mineralogist, a geologist, merchants, manufacturers, farmers, artisans and medical and divinity students.

The *Edward Everett* was a relatively new ship, approximately six years old, and well equipped. The bunks below deck were named after Boston localities. To combat boredom and maintain high morale, numerous regularly scheduled activities were organized by and for the passengers, including a musical band, Sunday and mid-week church services, games, lectures, and a weekly newspaper.

The ship's newspaper **Barometer** was intended to circulate the ship's news among the passengers and the crew, and to publish "original contributions in prose and verse." According to historian Oscar Lewis, the **Barometer** was "probably the earliest of the gold-ship 'newspapers.'" The **Barometer** was

> a four-page hand-written sheet issued every Saturday during the voyage of the *Edward Everett*. A board of five editors was responsible for the journal, the columns of which were filled with daily happenings on the ship, together with a record of her position and speed, and a leavening of lighter fare in the form of "original prose and poetical matter."[18]

Lewis notes that this and other shipboard newspapers (see, e.g., **The Emigrant, The Petrel**, and **The Shark**) "lacked the formality of print but more nearly approached conventional journalism" than the various travel journals and diaries kept during the voyages.

2. The Emigrant

The Emigrant was published aboard the *Alhambra*, a ship which embarked for California from New Orleans in the fall of 1849. The ship's paper was supposed to be published weekly during the voyage, but lasted only four numbers.

In his privately printed memoirs, the *Alhambra's* Captain George Coffin noted, "On Saturday, August 23rd, appeared the first number of 'The Emigrant.' It consisted of two sheets of foolscap closely written out in full by Mr. Moss."[19] While Mr. Moss may have served as editor and copyist, Captain Coffin filled more than half of each issue with his own compositions of rhyme and verse.

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[18] Oscar Lewis, *Sea Routes to the Gold Fields: The Migration by Water to California in 1849-1852* (New York: A. A. Knopf, 1949), p. 89.

[19] George Coffin, *A Pioneer Voyage to California and Round the World, 1849-1852, Ship Alhambra* (Chicago: privately printed, 1908), p. 41; see also p. 12 for reference to Mr. Sam Moss, Jr., "supercargo."

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Coffin claimed the paper "was well received, the reading matter was various, to please all tastes, and the croakers were silenced."[20] He also claimed audience response was so enthusiastic that when the second installment was ready on August 30, measures had to be taken to preserve order among the passengers. "So great was the desire to get hold of it that it was voted that one of the passengers should read it aloud to the rest." A freshly minted medical school graduate, Dr. Clark, was selected to read the poem. Captain Coffin noted the doctor "placed himself on the capstan, and the rest of the company gathered round, some standing, others seated about on spare spars, water casks, or whatever else they could find." The Captain-author, however, found that his work was not read with proper "fire and feeling." The young doctor's lack of force and ability, according to Coffin, explained why the man had no doubt failed in his chosen profession.[21]

The Emigrant's third issue, published Sept. 5, 1849, featured another of Captain Coffin's poems, "Simon Spriggin's Soliloquy." The issue also contained this curious advertisement:

> WANTED: A few degrees of south latitude. Any person being able to furnish them shall be installed an honorary member of the Committee on Navigation. Apply at the Surgeon's office

The Committee on Navigation was the tongue-in-cheek name given a group of the *Alhambra's* passengers who were in the habit of offering the ship's officers unsolicited advice on how to improve the operation of the vessel.

The *Alhambra's* newspaper struggled through only one more issue, then died. Captain Coffin noted its passing: "From this time 'The Emigrant' languished for want of sustenance; it did not appear the next Saturday. It made one more effort on Saturday, September 20th, and then gave up the ghost. The editorial valedictory had some reference to 'casting pearls before swine . . .'"[22] Simon Spriggins bowed himself out with a final poem, the inspirational character of which may be gathered from this stanza:

"Your saddle bags shall yet be filled
        With Sacramento's glittering ore.
Your doubts and fears shall all be still'd
        And troubles come not near you more."[23]

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[20] George Coffin, *A Pioneer Voyage to California*, p. 43

[21] George Coffin, *A Pioneer Voyage to California*, p. 45

[22] George Coffin, *A Pioneer Voyage to California*, p. 50

[23] George Coffin, *A Pioneer Voyage to California*, p. 51; see Oscar Lewis, *Sea Routes to the Gold Fields: The Migration by Water to California in 1849-1852* (New York: A. A. Knopf, 1949), p. 51

3. Flying Fish

The **Flying Fish** was published by women passengers on board the ship Mary Catherine out of Sydney, Australia, enroute to the gold fields of California. The first and only known issue was dated May 31, 1851.

The captain of the ship recorded in his log that to pass the time, some of the women passengers began publishing a shipboard newspaper, and on May 31, which happened to be the captain's 32nd birthday, the first number of the **Flying Fish**, 'a little journal of fun and merriment,' made its appearance.

Little else is known about this Australian shipboard paper.

Two things are noteworthy about the **Flying Fish**. First, it is the only known shipboard paper produced exclusively by women. No doubt other shipboard papers had women contributors and scribes, but this is the only one, according to the sole remaining independent documentary evidence from the voyage, founded, edited, and produced exclusively by women at sea.

Second, the fact that the captain considered the publication of the **Flying Fish** as nothing more than something "to pass the time," probably says as much about his attitude toward the women who produced the paper as it does about the quality and significance of the paper itself. Australia had been a British penal colony since the first settlements in 1788. Sailing crews familiar with Australian waters such as those aboard the Mary Catherine were no doubt used to a rough passenger list. Passengers on board the Mary Catherine to seek their fortunes in California probably included former convicts who had served their sentences. In such a context, an appreciation for the women's journalistic creativity was probably not a high priority among the crew and other passengers.

4. The Petrel

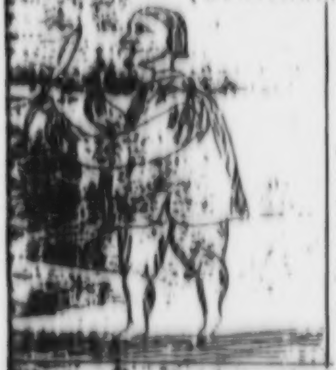
The Petrel (see was published on the ship *Duxbury* during the same voyage that produced **The Shark**. The issue numbering suggests that both papers may have been published contemporaneously.

The *Duxbury* left Boston for the California gold fields in February, 1849 carrying the Old Harvard Company, one of the hundreds of New England joint-stock companies organized to capitalize on the gold of California. According to Lewis, 102 joint stock companies sailed from Massachusetts during 1849 alone, the number of their members ranging from five to 180, the average being around 50, and their total

THE PETREL

No. 6 Published every Monday Morning on board Ship Duxbury. Vol I

Jack the Giant
or the
Adventures of the Haverhill Peg-driver
(concluded)



Chapter V.
Jack crosses the Line, retires to his den and is for a time forgotten.

Jack being now an old Salt, and his Ship having neared the line, he resolved to initiate some of the green ones, and thus show some of his feats of daring; he set the [illegible] ma-lingy by seizing his strong wood by the chine and trotting him [illegible] at the same time bedaub[illegible] with soot.

But you here now saw the end of his glory. After the mob still thinking him a little green seized him and commenced his initiation. They had just blacked his nose, and were proceeding in order, when by a desperate effort he broke from them, and with hair on end dashed away to the deck, got a big club and crept away where we will leave him for a season swearing vengeance on his persecutors.

Billington

By Telegraph — We have, says a New-York paper just received intelligence from a California-bound vessel, stating that they have a very rare animal on board, which was caught while crossing the line. He appears to be of the [illegible] and is to be sent home to Ba[illegible] for exhibition. As proof of [illegible] intelligence, it was heard [illegible] on one occasion when it [illegible] blowing quite rough, that [illegible] spray blew clean over the pole".

The Dream
(By Cambridge)

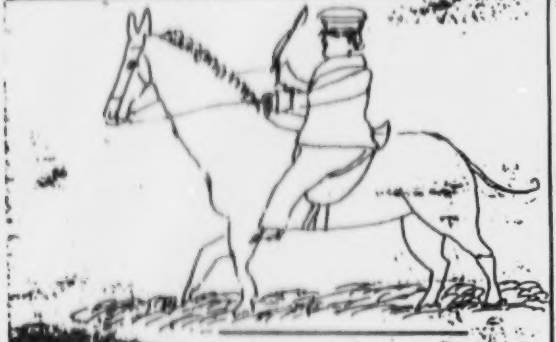
T'other night while I was sittin
Spellin out the latest news;
'Bout that place where gold they're gittin
I fell straight into a snooze.

Then I heard an awful clatter, [illegible]
Like a Mule upon the floor.
While I looked to see the matter,
Old "Varmount" whisked through the door.

Thinks I that is something curious
Where in thunder is he gone!
And what made him go so furious?
Darn'd if I dont foller on.

So I up and follered after
At a pretty darned good pace
Guided by the peals of laughter.
Very soon I found the place.

'Twas a dark and gloomy cavern,
And I felt a little seal
'Twas as big as Brook's tavern,
And a hay-stack top o that.



Lost.

The Quarter-master of Ship Duxbury.. It has feared that some accident has befallen him as when last seen he was mounted on a Mule on a tour of exploration into the country.
Any information will be thankfully received by his anxious friend

P. McKenney.

Horn.

Life on board.

Religious services are now held every morning after breakfast, between-decks. The passengers are respectfully invited to attend.

Last monday morning Prof - Smith met with an accident by falling on deck with a bucket of hot Coffee, badly scalding his arm. We are happy to say that he is now better and able to resume his very important duties, much to the satisfaction of the denizens of the Saloon.

One of the seamen shipped at Rio named George, fell from the fore-top last Monday, and was seriously injured; but is at present somewhat better.

Among the amusements common on board that of bird-catching has been the most prominent. Some beautiful speciminas of the Cape Pigeon and other wild-fowl abounding in these lattitudes, have been taken affording much sport and some excellent Soup.

We are extremely happy in being able to announce, as we do upon the highest authority, that a most interesting event is likely to take place previous to our arrival at San-Francisco.
As the case is one of a most delicate nature we forbear any comments, merely [illegible] for the gratification of our numerous and highly respectable body of readers, that coming events cast their shaddows before.

New readings from "our" Shakespeare.

"I wrap the world in silence so profound
that all may hear the rumbling of the
mighty wheels of time".

"Some men go plodding on as if their
lives were only held by them to measure time".

"I'd be a fiend, a little devil,
Full of hell's own pranks,
And scare the world with my precosity.

Some men with genius rare seem full
And lay their poor brains bare upon
These, as rocks upon the sea-washed shore.

Billington.

☞ A good deal of fun was created one by the appearance of a lady in the hospital, while a very interesting examination was going on
The subject fainted immediately, while the Surgeon Dr Burdell, settled right down into his boots, and "amputated himself all over".
The lady declares that she will "come the paddy over them" yet.

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Free and Fearless.

THE PETREL

No 9 Published every Monday Morning on board Ship Duxbury. Vol 1

For the Petrel.

Juan Fernandez.
Part 1.

Juan! Juan! land of story
Hark! we whisper now to thee
List ye then ye hills all hoary
We have come across the sea

We are near thy shores at morning
Ere the sun has climbed the sky
And the day from night is dawning
Greeting our enraptured eye.

We have come for the pure waters
That prattle down thy mountain rills
Filling us with sounds that loiter
On New-Englands rock-ribbed hills

Now thy bosom holds our anchor
Light we swing to meet the breeze
Pray thee have for us no rancor
We'll not mar thy ancient trees.

We only come with fancy beaming
From out our eye and teeming brain
To see thy hills with sunlight gleaming
Like a village gilded pane.

To taste thy waters, see thy beauty
In every rock and waving tree
Therefore list ye—though no duty—
We would tell fair tales of thee.

Many a long long year ago
When tripping lightly off to school
Or dabbling as a school-boy dabbles
In a muddy way-side pool—

We thought of thee old rocky Juan!
Heard thy never-ceasing roar
Counted every shell and pebble
That lay upon thy sea-beat shore.

And we saw the lonely cavern
Built by Crusoe 'neath the hill
Surrounded by a palisade
[illegible]side a sparkling rill.

And we saw the bungling ladder
Made with hatchet very dull
With which he crossed into his castle
Then upward after him did pull—

And the goat skin cap that covered
Up old grey-beard's tangled head
And the place that nights he slept
Which his fancy called a bed.

And we saw the straight-limbed "Friday"
Sitting cross-legged near the door
An umbrella and a knapsack
In a corner on the floor.

And we saw on long poles dangling
Crosswise stretched from beam to beam
Clustering bunches of dried wild gr[illegible]
Of the which we'd often dream.

And with knapsack on his back
We saw him starting for the shore
Where timid waves would leap and sp
Trying to raise a mimic roar.

Then we saw him start and stagger
As he turned his eye around
And on bended knee he gazed
On human foot-prints in the ground

Neither is this all we painted
With a fancy young and green
For if reader seems the story
All he finds there we have seen.

But what we really saw—not fancied
As we stepped upon thy shore
We will tell you if you'll listen
In a line or two, or more.

Part 2d

'Twas morning, and the sun
Was shining fair and bright
And o'er the hills of Juan flashed
Her red and radiant light.

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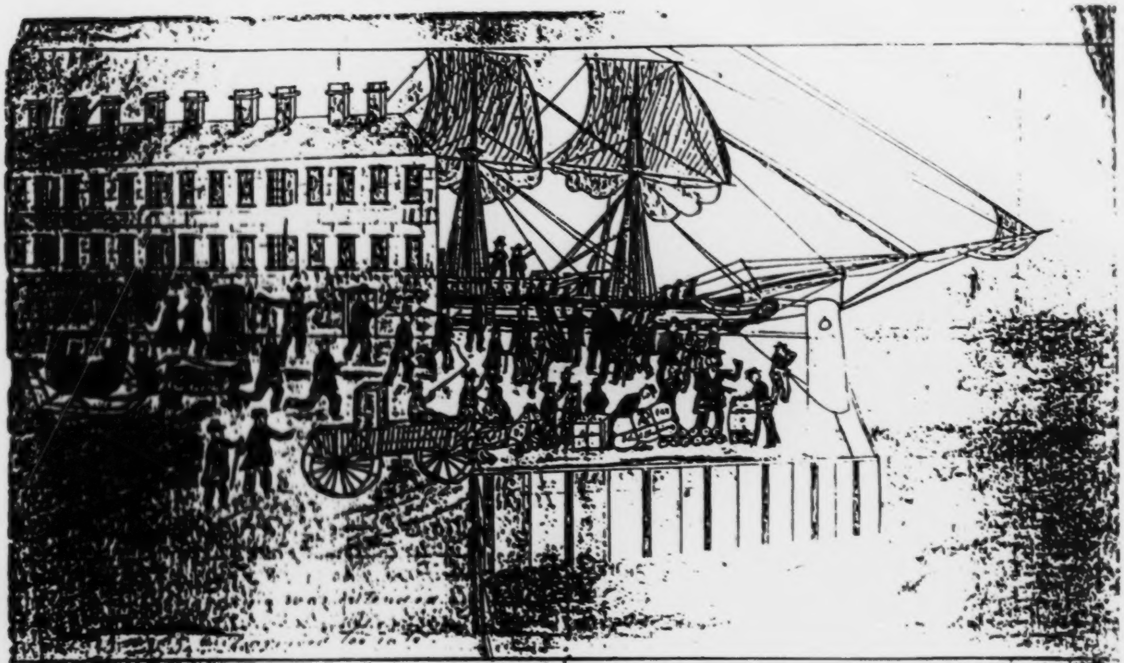

[illegible] was [illegible]
[illegible] too in to.

[illegible] Reward. – Lost or Stolen.

Mr Editor

[illegible] that I've lost my pot.
[illegible] mislaid or stolen I know not;
But of one thing I'm certain 'tis gone 'tis gone.
And I am left desolate for it to mourn.

Now to drink my tea in I found it quite handy
My Coffee and sometimes a snifter of Brandy.
And for purposes too numerous to mention here.
[illegible] every day for more than half a year.

Now the Steward cries "hot tea in the Saloon".
I hear it unmoved for my tin pot is gone.
May perdition seize the thief that took it [away]
May bad luck follow him to California.

When in search of gold he digs up the sand
May the ague shake it all out of his hands.
And when he daily uses my tin cup.
May it contain either quinine, or a calomel jalap.

Now if any should cast your eyes on it should happen,
You will see my name in full on the bottom,
And if you return it to me or Bro. Shedd.
Tomorrow I'd give you half my ginger-bread

Snipe.

Thoughts on leaving home.

I go upon the world's great tide, but whither,
The winds that bear me on must tell.
Perhaps some sunny clime may catch my eye
And pleasant thoughts and scenes my fancy greets,
Or shading clouds around my path may lower,
And fill my heart with sadness to the hour
When from home I strayed.

The snow-white sails that bear me on swell free,
And once again my soul [illegible]
The sky that late was black has met a change
And miles of blue in quiet succession range,
But night has come and all dark billows roam,
That press my [illegible] senses to that home
I [illegible]

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exceeding 4,200. Each member paid an equal sum into the common treasury. Each had an equal voice in its management and stood to reap an equal share of the profits. Often there was also a board of directors, chosen from among the town's leaders, older men who helped finance the expeditions but themselves remained at home.[24]

Hard feelings developed between officers and passengers aboard the Duxbury on the first leg of its voyage. The chief complaint was against the food and the manner of service. The Duxbury, an ancient three-masted craft, was so hard to maneuver that she was said to require all of Massachusetts Bay in which to turn. She left Boston so loaded that the galley space proved woefully inadequate. After a week of subsisting on two sparse meals a day, the passengers met and made known their grievances. For a long time their protests were disregarded. "Petition after petition was sent in to the captain without producing any other effect than the reply, 'If it is not enough, go without.'" The group continued on short rations--"we were allowed one-half pint of weak tea a day and three pounds of sugar a month'--until the Duxbury reached Rio. There a committee of passengers related their troubles to the United States consul. The result was that the capacity of the galley was ordered enlarged and thereafter the passengers fared better.

One passenger observed that there was "too much praying on board." Each morning the Duxbury's preacher, the Rev. Brierly, read a chapter from the Bible, offered a prayer, and delivered a brief sermon. On Wednesdays he presided over a prayer meeting; on Sundays he preached "a full-length sermon" and followed this with a class discussion group; on Tuesdays and Fridays he conducted a lyceum. This was during the early stages of the voyage; later this comprehensive program of religious education collapsed, as it did on many other ships, and during the final weeks of the Duxbury's company seems to have been without religious instruction of any kind.

Despite these difficulties, Easterners frequently chose to go to California via ship around Cape Horn. Between December 14, 1848, and January 18, 1849 (about the time the Duxbury embarked on its voyage), 61 ships with an average of 50 passengers each sailed for California from New York City, Boston, Salem, Philadelphia, Baltimore, and Norfolk. In the month of February, 1849, as many as 70

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[24] Oscar Lewis, *Sea Routes to the Gold Fields*, p. 22.

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ships sailed from Boston harbor.[25] The trip from New England around the Horn and up to San Francisco usually took more than six months; the average time was 168 days.[26]

The Duxbury's captain, William H. DeCosta, both kept a log or journal (he published his log-journal on his arrival to San Francisco) and wrote the weekly paper, so **The Petrel** was not just his private diary, but a news periodical for the passengers and crew. The first issue of **The Petrel**, published March 26, 1849, contained the following introduction:

> "Ourselves." We appear before our readers to-day, for the first time, with our weekly budget of fun, fact, and fancy, for the particular edification and amusement of the passengers on board of the Ship Duxbury now on her voyage from Boston to San Francisco. We shall continue its publication as often as circumstances will admit, and should be pleased to receive well written communications upon any subject that may be thought interesting to the "crowd." All communications must be handed in as early as Friday morning.--Smike, Jr.

Comparison of the original and the published version reveal a willingness to "clean up" the language and to put a "spin" on the tone and sentiment different from the original. For example, the published version of Monday, 26th reads:

> To-day for the first time the 'Petrel' was issued, a small weekly the size of letter sheet size (sic), devoted not to 'literature and the fine arts,' but to fun for the passengers of the ship Duxbury. Should anyone hereafter not a passenger in this good ship peruse its columns, let he or she not say that it did not answer the end of its design . . . for it takes extremely small things to please us pent up as we are in so small a space . . . Success, say we to the Petrel!

However, the original, unedited version of Monday, 26th, reads:

> To-day for the first time, the 'Petrel' was issued, a small weekly of the size of a letter sheet. It will be issued every Monday hereafter. For me to say that it is quite racy is perhaps superfluous, but I shall say so. I shall make some extracts from it if I do not copy it in full.

DeCosta was apparently pleased with the reception of **The Petrel**. In Monday, 9th, entry of his journal he noted, "**The Petrel** appeared again today causing as much excitement as usual. Although I am not an advocate of blowing, yet in the case of **The Petrel** where there is so much fun and so little injury, I am seduced into it."

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[25] William S. Greever, *Bonanza West: The Story of Western Mining Rushes, 1848-1900* (University of Idaho Press, 1963), pp. 21-23.

[26] William S. Greever, *Bonanza West*, p. 23.

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The two highlights of the journey around South America were the stops in Rio and at Juan Ferdnandez island. **The Petrel** recorded the pleasures of shore leave and even illustrated the events in later issues (see **The Petrel** figures).

DeCosta also imitated newspapers of the day with an entry that read: "By telegraph--We have, says a New York paper, just received intelligence from a California-bound vessel, stating that they have a very rare animal on board, which was caught crossing the line . . . ." While the story was a hoax, the joke could only have worked if the passengers were familiar with the "telegraph news" system of the day, and took the practice of ship-borne intelligence for granted.

5. The Shark

The Shark was the second handwritten newspaper produced aboard the Duxbury. Extant copies of **The Petrel**, published on the Duxbury apparently during the same voyage, were possibly published after the ship's layover at Rio, although the issue numbering suggests that both papers may have been published contemporaneously.

Unlike the weekly **Petrel**, **The Shark**, (vol. 1, no. 3, Aug. 4, 1849), promised to be "published semi-occasionally":

> "Salutatory. To-day we commence the publishment of a new weekly, entitled the Shark, in which we shall endeavor to mirror faithfully some portion of the doings and life on board the 'best chance yet for California.'
>
> "Heretofore we have supported and given our small influence to the "Petrel" with our small contributions and endeavored in every way to make that paper what it has been, a useful; and entertaining sheet; but believing there is still a wide field for operation we beg leave most respectfully to be allowed to insert our little oar into the affairs of this big boat, the Duxbury."

Captain DeCosta's first reference to **The Shark** appeared in his Wednesday, 27th, journal entry: "To-day the 'Shark' made his appearance." He followed its progress the next week, Wednesday, 4th (July), with the comment that "The 'Shark' kept his tail within bounds.

The publisher of **The Shark** is not known. It is possible that the captain had two papers created to generate interest or controversy, or that a member of the crew or a passenger produced **The Shark** to match wits with the captain or counter the perspective found in **The Petrel**.

The British Navy's Shipboard Papers

6. The Emigrant Soldiers Gazette and Cape Horn Chronicle

The Emigrant Soldiers Gazette and Cape Horn Chronicle was published originally in manuscript form on board the ship *Thames City*, which sailed from Gravesend, England, on October 10, 1858 and reached Esquimalt, Vancouver Island, British Columbia on April 12, 1859. Aboard the ship was a detachment of Royal Engineers selected for service in B.C.

The paper was edited by Second Corporal Charles Sinnett, R.E., and assisted by Lt. H.S. Palmer, R.E. Each Saturday night, the day of publication, the paper was read aloud by the ship's commanding officer, Captain H.R. Luard..

The first issue of the shipboard paper, the **Emigrant Soldiers Gazette and Cape Horn Chronicle**, published on the British *Thames City* enroute to Vancouver, B.C., declared itself to be a "newspaper."

> . . . [A] thoughtful friend on shore, whose name should be held in honour among us, has provided us with the means of establishing a small Newspaper, to be kept up by our own contributions.

Shipboard publications may have had small, captive audiences, but this editor took his charge (orders?) very seriously and produced 17 issues on the voyage from his "Editor's Office, Starboard Front Cabin" between Nov. 6, 1857 and April 2, 1858.

The first issue explained that as one of the ways to avoid monotony and "keep a merry heart,"

> Let us set about it with good will and heartiness. Some little amusement and instruction will be sure to follow. Any trifling matter recorded now will be a pleasure to refer to hereafter as a memorial of the peaceful and happy days of our voyage.

The first issue also published a notice "To Correspondents" as a guide to contributors:

> 1. In the future, contributions of Leading Articles on any subject are requested to send them in to the Editor by noon every Thursday, and all other contributions should be sent in by 8 o'clock the same evening, to give ample time for publishing the paper.
> 2. Any person willing to answer letters addressed "To the Editor," are invited to do so, addressing their answers in the same manner.
> 3. The answers to Charades and Conundrums will be published the Saturday after they appear, and any person guessing an answer, may learn on application to the Editor or Sub-Editor if he is right or wrong. But is hoped correct guessers will keep their secret.

THE
EMIGRANT SOLDIER'S GAZETTE,
AND
Cape Horn Chronicle.

No. 1. SATURDAY 6th NOVEMBER 1858 NUMBER 1

MOTTOES:

Quo fas et gloria ducunt.

Fear God, honour the king.—1st Peter II. 17.

THAMES CITY.

[illegible] Lon. 29° 11' W.

Nov. 5th at 4h 18m P.M.

We started on a long voyage for a [illegible] with no prospect [illegible] of [illegible] to be [illegible] of any [illegible] our [illegible] of our infirmities can be [illegible] at some [illegible] the way. A life at [illegible] always [illegible] a great [illegible] and we shall no doubt [illegible] the time slipping lazily by, with [illegible] and at the rate of not more than [illegible] notwithstanding the [illegible] we look forward to [illegible] the clear starlight nights [illegible] But we know, all [illegible]

BIRTHS.

On the 28th ult. the wife of [illegible] Quarter Master Sergeant David [illegible] R.E. of a daughter.

TO THE EDITOR

Sir,

I find in a work on the early events of creation that the date of the birth of Adam [illegible] that Cain slew his brother Abel in [illegible] and that the City of Enoch was built in the same year. As Cain could not have been more than [illegible] years of age and Abel still younger, by whom could the above named City have been built? [illegible] If you can give me any information on the subject through your Chronicle I shall feel greatly obliged.

I am Sir your humble obedient servant

Enquirer.

THE NATURAL HISTORY OF THE VOYAGE

The study of Nature is one which ought to interest the most listless of observers at all times, but of these none are more calculated than another to inspire man with reflections on the wonders and beauties of the world we live in, and to fill his mind with feelings of gratitude toward the Architect of the Universe for his bountiful goodness in arranging all things for the good of his creatures. [illegible] on a long voyage traversing the vast and boundless ocean, where at times nothing is discernible around him but the wide expanse of water, and the [illegible] canopy of heaven apparently meeting the water at [illegible] the horizon. With the exception of the ship [illegible] we feel we are entirely surrounded by natural objects. We have beneath and around us the briny deep, calm, smooth, and unruffled at one moment, boisterous, foaming and angry at another, while above our heads the [illegible] firmament, at times presenting one beautiful rich blue [illegible] and at others displaying the most dismal looking black clouds [illegible] for [illegible] Then again we cannot but [illegible] on the animated creatures which [illegible] the present [illegible] to our view. Scarcely a day passes without our attention being drawn to some poor little wandering bird, whose appearance [illegible] or to some one of the numerous finny tribes, which frequently follow vessels for several hours at a time, in the hope of picking up scraps of food for their subsistence, and which in the clear waters of the Southern seas are visible many feet below the ship's keel. Now though we all of us more or less see and observe these objects, still how few there are who think of enquiring into their nature and habits, and who ask themselves why and wherefore [illegible] The object of our paper being to afford [illegible] and useful information during the voyage [illegible] illustrate the nature and habits of such fish and [illegible]

[illegible] of that portion of the [illegible] and lighter [illegible] Now we all know that [illegible] heated by [illegible] becomes lighter [illegible] a constant stream of fresh air [illegible] long as the fire [illegible] is free from any obstacle [illegible] a draught is produced [illegible] the north [illegible] Much more might be said [illegible] It is hoped that the foregoing [illegible] we may look forward to [illegible]

NAVAL & MILITARY IN

The last detachment of Royal [illegible] British Columbia sailed [illegible] on Sunday the [illegible] 557 tons [illegible] The detachment consists [illegible] 118 [illegible]

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THE EMIGRANT

Soldiers' Gazette,

AND CAPE HORN CHRONICLE.

[illegible] "THAMES CITY," SATURDAY, NOVEMBER 6th, 1858. [Price 3d.

The Emigrant Soldiers' Gazette.

"THAMES CITY," NOVEMBER 6th, 1858.

[illegible]

Lat. 20.58 N. Lon. 20.11 W. New Moon, Nov. 5th, at 4h. 48m. p. m.

We have started on a long voyage for a distant land, with no prospect for several months of any fresh faces to be seen, or any fresh beef to be eaten, unless our tender hearted Captain, mindful of our infirmities, can be prevailed upon to put in at some pleasant and productive port by the way. A life at sea must of necessity be always to a great extent monotonous, and we shall no doubt often find the time slipping lazily by, with a faint breeze, and at the rate of not more than a knot or two an hour, notwithstanding the glorious days of sunshine we look forward to in the tropics, and the clear starlight nights of the southern hemisphere. But we know, all of us, that, of our duties to one another, the chief is at all times, and never more so in our own cases than now, a constant feeling of brotherly love and kindness, a resolution to avoid offence, a desire to please and be pleased, and a readiness to contribute, each in his ability, to the common fund of content and cheerfulness. Shakespeare says that "A merry heart goes all the day," and we trust that in this respect ours may be found at the end of the voyage to have kept time as truly as the Captain's chronometer. As one means towards this desired end, a thoughtful friend on shore, whose name should be held in honor among us, has provided us with the means of establishing a small Newspaper, to be kept up by our own contributions. Let us set about it with good will and heartiness. Some little amusement, and instruction will be sure to follow. Any trifling matter recorded now it will be a pleasure to refer to hereafter as a memorial of the peaceful and happy days of our voyage, contrasted with the turmoil and excitement that await us in the Colony of British Columbia.

The present year has been a very remarkable one. The youngest as well as the oldest of our readers will always look back with feelings of astonishment and satisfaction at the number of events, social, political, and otherwise that have crowded on one another in quick succession during the portion of year 1858 that has already elapsed. The launch of the Leviathan, the relief of Lucknow and Cawnpore and the suppression of the Indian mutiny, the Princess Royal's marriage, the completion of the Persian and Chinese wars, the extension of our Telegraphic communication, the appearance of the Comet, the visit of the Queen to Cherbourg, the extraordinary vintage, the discovery of gold in abundance in British Columbia leading to its improved colonization, are all confirmatory of our opening sentence, and possess the additional charm to Englishmen that nearly all of them have ended in increasing their power and strengthening their resources. But on this 6th day of November an event has occurred which far outstrips in importance those previously mentioned, and adds the as yet crowning gem to the wonders of this wonderful year. We allude to the birth of the Emigrant Soldiers' Gazette & Cape Horn Chronicle. Our readers have doubtless often read in English newspapers short paragraphs headed "Death of a contemporary," in which in a few but pithy words are described the birth, rise, decline, and ultimate death of the contemporary in question, and it is a singular fact that in no instance do Editors allude to the birth of a contemporary until it has ceased altogether to exist. If however our Office were in England instead of in Lat. 21 N., Long. 20 W., so remarkable an event as the birth of the E. S. G. and C. H. C. could not fail to call forth remarks from all sides, although only a "birth." True the remarks would be various. Those on the one hand from superior Editors, quaking though the latter would necessarily be at the prospect of rivalry from such an array of talent, would, written in an apparently generous spirit, give us encouragement and congratulate the world and ourselves on the event, while on the other hand the inferior class of Editors would give vent to their feelings in petty and malicious spite. As however we are now beyond the reach of either encouragement or discouragement, we will proceed at once to congratulate our friends on the completion of arrangements

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The paper maintained a regular front page news section and other regular sections, such as "Natural History of the Voyage," "Correspondence," "Conundrums," "Naval and Military Intelligence," "Songs and Poetry," "Jokes," "Foreign Intelligence," "Market Intelligence," and "Advertisements." The 17 issues of the three-column paper also contained news of the crew, including the birth of one of the soldier's daughters.

After the arrival of the detachment at their camp at New Westminster, the group decided to have the paper printed for distribution among themselves and their families. At their own expense, they paid a printer at the **British Columbian** to print the paper in the manner of a "proper newspaper" (compare both the handwritten and printed versions in the attached figures).

7. The Illustrated Artic News

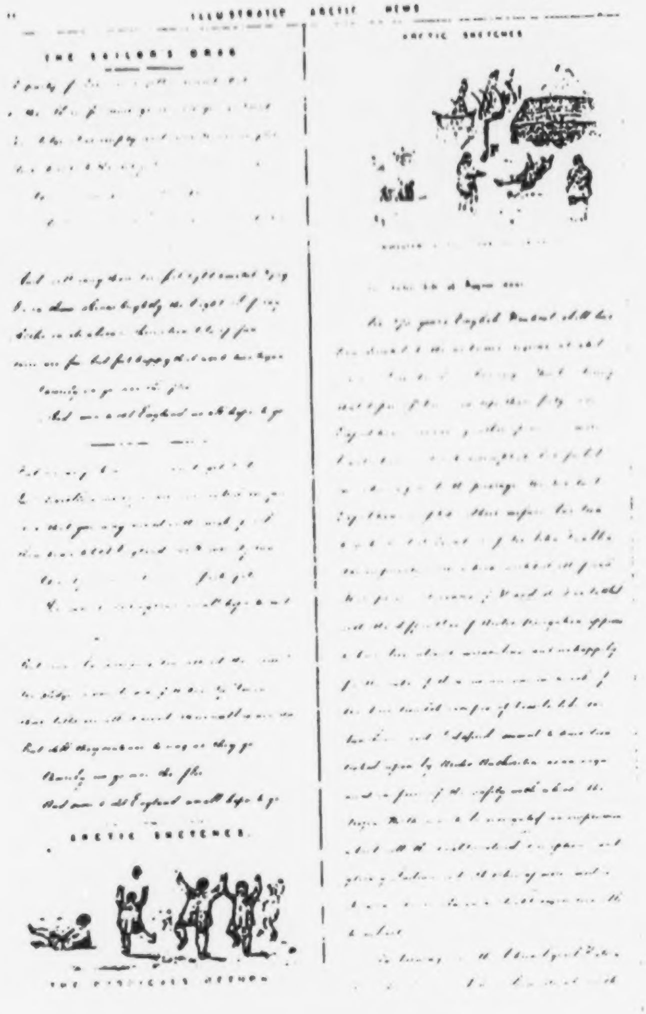
The crew that produced **The Illustrated Arctic News** was on a mission to find the missing members of Sir John Franklin's ill-fated arctic expedition. This paper was printed and published after the expedition returned home, from the five numbers originally issued in manuscript, October 1850-March 1851, on board the *H.M.S. Resolute* under the command of Horatio T. Austin during its wintering in Barrow Strait.

Franklin had explored the arctic coast of Canada on expeditions in 1819-1822, and again in 1825-1827, during which he founded Fort Franklin. After serving as the governor of Van Diemen's Land (now Tasmania, off Australia) from 1836-1843, he embarked one last time on a search for the Northwest Passage in 1845. His entire expedition of 129 men was lost when their ships were apparently frozen in the arctic ice. When Franklin failed to reach home port, more than 40 searches were dispatched to find Franklin and his men. *The Resolute* was one such search and rescue vessel.

The two-column paper included illustrations of the expeditions activities, such as the crew working and playing on the ice (see figure)

8. The New (or North) Georgia Gazette and Winter Chronicle

Finally, **The New (or North) Georgia Gazette and Winter Chronicle** was published by the famed arctic explorer William Parry. Sir William Edward Parry (1790-1855), a British rear admiral, made several voyages in search of the Northwest Passage. In 1818 he accompanied Sir John Ross on his first arctic exploration.



ILLUSTRATED ARCTIC NEWS

THE SAILOR'S DREAM

ARCTIC SKETCHES

ARCTIC SKETCHES

No. 5444. Actual type page 44.5 x 27 cm

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On his second attempt to find the passage in 1819-1820, he and his expedition were forced to winter far above the Artic Circle. Twenty-one numbers of the paper were produced and circulated in manuscript form by members of the Parry expedition while they were at winter quarters in Winter Harbour, Melville Island.

Written, produced and circulated in manuscript by members of the Parry expedition while they were at their winter quarters, the paper was later published in printed form under the title, **New Georgia Gazette, and Winter Chronicle** after the expedition's return to London.

The confusion over the name of the paper stems from when the expedition arrived in the Arctic. Parry called the group of islands he discovered the "New Georgia Islands," but having afterwards remembered that this name was already used in another part of the world, he decided to change it to "North Georgian Islands" to honor George the Third. This change accounts for the variation in name used in the title on the manuscript copy and that used on the published editions.

Conclusion: The Significance of Handwritten Shipboard Papers

These shipboard papers demonstrate that the vast oceanic communication system in place by the 19th century included the production of handwritten publications at sea. These shipboard periodicals provided entertainment and chronicled the stories of passengers and crew. They covered the events and activities of their floating communities that gave meaning, value, and significance to their odyssey.

The settings and circumstances of these shipboard papers made them unusual, even novel, and it may be tempting to dismiss them as insignificant curiosities of a bygone era. However, their histories (extending at least from 1819 to 1859) illustrate that people reproduce elements of their normative cultural environments even when the common conditions for those cultures are absent. Producing newspapers on board sailing vessels far out to sea may seem preposterous at first glance, until it is recognized that people replicate or reconstruct their social worlds wherever they go. Remarkably, these handwritten papers at sea varied little from their printed counterparts on shore.

These papers also demonstrate that the newspaper and newsletter forms, while typically associated with cities and large organizations, were quite adaptable to relatively small communities in radically non-urban environments. A ship at sea is hardly the place one would typically consider "fertile soil" for the birth of periodicals or *news* publications. Nevertheless, papers appeared aboard ships of various kinds (passenger and military vessels) plying the waters of the world's two largest oceans. Perhaps because these floating communities so clearly embodied social isolation in one of its most extreme forms, the role and significance of news and other forms of storytelling were amplified for those tossed about on the open seas.

These papers were handwritten because printing, the typical mode of reproduction for periodicals after the 17th century, was both unnecessary and impractical. Given the relatively few passengers and crew on board even the largest ships, close quarters, and long periods of "idle" time available for public and private reading, relatively few copies of these papers could easily and quickly reach every potential audience member. Unlike their land-based printed counterparts, these papers likely reached 100 percent of their intended audiences. Handwriting, as a technology of duplication, was also much more appropriate and adaptable to the harsh conditions at sea than was printing. While ship captains may have edited or encouraged these publications on their vessels, handwriting was an extraordinarily democratic means of publication that opened the possibilities of expression to everyone under the authority of their captains. The emergence of "competitive" shipboard papers, such as **The Petrel** and **The Shark**, demonstrates that shipboard freedom of the press, to twist A.J. Liebling's famous dictum, belonged to anybody with access to a pen, and not just to those who owned a printing press.

The passengers and crews examined in this study independently produced handwritten periodicals using the common journalistic forms and styles of their era on the high seas reaching from Boston to San Francisco to London to Sydney, and from the Cape Horn to the Artic. These shipboard papers were an oceanic extension of the vast system of 19th century communication and culture that reached beyond the shores of ordinary journalistic imagination--or even journalism histories--as far as ship and sail could carry.

* * *

Annotated Bibliography
# of Nineteenth Century Handwritten
Shipboard Periodicals

BAROMETER

Publication History:

Place of Publication:	Shipboard *Edward Everett* enroute to the California gold fields
Frequency:	Weekly, every Saturday
Volume and Issue Data:	The *Edward Everett* departed Boston, Jan. 13, 1849
Size and Format:	Four pages, handwritten
Editor/Publisher:	"A board of five editors was responsible for the journal"; members of the Boston and California Joint Mining and Trading Company
Title Changes and Continuation:	None

Information Sources:

Bibliography: Oscar Lewis, *Sea Routes to the Gold Fields: The Migration by Water to California in 1849-1852* (New York: A.A. Knopf, 1949), pp. 89-92
Locations: Bancroft?

THE EMIGRANT

Publication History:

Place of Publication:	Shipboard *Alhambra* enroute to California gold fields
Frequency:	Weekly; irregular
Volume and Issue Data:	The *Alhambra* departed New Orleans in the fall, 1849; only four numbers issued; known dates: No. 3, Sept. 5; No. 4, Sept. 20, 1849
Size and Format:	"Two sheets of foolscap, closely written out in full"
Editor/Publisher:	"Mr. Moss" and Captain George Coffin
Title Changes and Continuation:	None

Information Sources:

Bibliography: George Coffin, *A Pioneer Voyage to California and Round the World, 1849-1852, Ship Alhambra* (Chicago: privately printed, 1908); Oscar Lewis, *Sea Routes to the Gold Fields: The Migration by Water to California in 1849-1852* (New York: A.A. Knopf, 1949), pp. 89-92
Locations: None located

EMIGRANT SOLDIERS GAZETTE AND CAPE HORN CHRONICLE

Publication History:

Place of Publication:	"Editor's office, Starboard Front Cabin, *Thames City*," enroute from Gravesend, England to Vancouver Island, British Columbia, Canada
Frequency:	Weekly ("read aloud each Saturday night, the day of publication, by the commanding officer, Capt. H.R. Luard, R.E.")
Volume and Issue Data:	17 numbers issued: No. 1, Nov. 6, 1858 to No. 17, April 2, 1859; not published during three week layover at Falkland Islands
Size and Format:	10.75 x 18 inches; pre-printed title/masthead; pen and ink
Editor/Publisher:	Second Corporal Charles Sinnett, R.E., assisted by Lt. H.S. Palmer, R.E.
Title Changes and Continuation:	None

Information Sources:

Bibliography: *Emigrant Soldiers Gazette and Cape Horn Chronicle* (Printed by R. Wolfenden, 1907)
Locations: British Columbia Archives and Records Services, Victoria, British Columbia; (printed edition) The Bancroft Library, University of California, Berkeley, California

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FLYING FISH

Publication History:

Place of Publication:	Shipboard *Mary Catherine* out of Sydney, Australia, enroute to the California goldfields
Frequency:	Unknown
Volume and Issue Data:	No. 1, May 31, 1851
Size and Format:	unknown; pen and ink
Editor/Publisher:	"Some of the women passengers aboard"
Title Changes and Continuation:	None

Information Sources:

Bibliography: Capt. Henry Thomas Fox, Log of *Mary Catherine*, in possession of Mrs. F.G. Marginson, Hamilton, Brisbane, Queensland, Australia; cited in Charles Bateson, *Gold Fleet for California: Forty Niners from Australia and New Zealand* (Auckland: Minerva Ltd., 1963), pp. 47, 136-138.
Locations: Unknown

THE ILLUSTRATED ARTIC NEWS

Publication History:

Place of Publication:	On board *H.M.S. Resolute*, Captain Horatio T. Austin, C.B., in search of the expedition under Sir John Franklin
Frequency:	Five issues; frequency unknown
Volume and Issue Data:	October 1850-March 1851
Size and Format:	Printed facsimile is folio, 12 x 19 inches, 57 pp

Editor/Publisher: Crew of the *H.M.S. Resolute*
Title Changes and Continuation: None

Information Sources:

Bibliography: Sherard Osborn and George F. McDougall, eds, *Facsimile of the Illustrated Artic News, Published on Board H.M.S. Resolute, Captain Horatio T. Austin, C.B., In Search of the Expedition Under Sir John Franklin* (London: Ackerman, 1852)
Locations: British Museum? or Scott Polar Research Institute, Cambridge England CB2 1ER

THE PETREL

Publication History:

Place of Publication: "On board Ship *Duxbury*," clipper out of Boston enroute to the California gold fields
Frequency: Weekly; irregular; "published every Monday morning"
Volume and Issue Data: Vol. 1, No. 1, March 26, 1849; Vol. 1, No. 2, April 2, 1849; Vol. 1, Nos. 3-7 and 9, no dates; Vol. 1, No. 8, lead article dated June 10, 1849; Vol. 1, No. 10, no date, but article on "Celebration of American Independence." The third number has no title or volume-number. The term "petrel" apparently refers to various sea birds
Size and Format: 8 x 10 in.; oil cloth-like paper; two columns; pen and ink; illustrated; 2-4 pp., variable
Editor/Publisher: William DeCosta ("Smike, Jr."?)
Title Changes and Continuation: Contemporary of **The Shark** (See **The Shark**) published aboard the *Duxbury* on same voyage

Information Sources:

Bibliography: See Oscar Lewis, *Sea Routes to the Gold Fields: The Migration by Water to California in 1849-1852* (New York: A.A. Knopf, 1949), p. 89. See also G.B. Worden letter to Ira Brown: Rio de Janeiro, ALS 1849 April 23, University of California, Berkeley, Bancroft Library, Manuscript Collection, Mss C-B 547:138; and William S. Greever, *Bonanza West: The Story of Western Mining Rushes, 1848-1900* (University of Idaho Press, 1963), pp. 21-23
Locations: Eleven numbers: Huntington Library, Manuscripts Division, San Marino, California; accompanying the journal of the *Duxbury* voyage, Boston-San Francisco, by William H. DeCosta, 1849, Feb.-June 23 (HM 234); 10 numbers: University of California, Berkeley, Bancroft Library, Manuscript Collection, Mss C-F 147; three numbers: (no dates, circa Feb.-July, 1849) Natural History Museum of Los Angeles County

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THE SHARK

Publication History:

Place of Publication: Shipboard *Duxbury* enroute to California gold fields from Boston (1849)
Frequency: Weekly
Volume and Issue Data: "Issued on The *Duxbury* throughout the spring of 1849" (Lewis)
Size and Format: Unknown

Editor/Publisher: Unknown
Title Changes and Continuation: Contemporary with **The Petrel**, after departure from Rio

Information Sources:

Bibliography: Oscar Lewis, *Sea Routes to the Gold Fields: The Migration by Water to California in 1849-1852* (New York: A.A. Knopf, 1949), pp. 22-29, 89-92

Locations: Four numbers: Huntington Library, Manuscripts Division, San Marino, California; accompanies the journal of the *Duxbury* voyage, Boston-San Francisco, by William H. DeCosta, 1849, Feb.-June 23 (HM 234)

THE NEW GEORGIA GAZETTE AND WINTER CHRONICLE

Publication History:

Place of Publication: Shipboard *Hecla*, Winter Harbour, Melville Island, Parry Islands, NW Territories, Canada
Frequency: Unknown
Volume and Issue Data: No. 1-21; Nov 1, 1819 to March 20, 1820
Size and Format: Unknown
Editor/Publisher: Edward Sabine, Captain of the *Hecla*
Title Changes and Continuation: **North Georgia Gazette and Winter Chronicle**

Information Sources:

Bibliography: Sir William Edward Parry, *Journal of a Voyage for the Discovery of a North-West Passage from the Atlantic to the Pacific; Performed in the Years 1819-1820 in His Majesty's Ships Hecla and Griper* (London: J. Murray, 1821); Alexander Fisher, *A Journal of a Voyage of Discovery to the Arctic Regions in His Majesty's Ships Hecla and Griper in the Years 1819-20* (London: Longman, Hurst, Rees, Orme, and Brown, 1821); The Rev. Edward Parry, ed., *Memoirs of Rear-Admiral Sir William Edward Parry* (London: Longman, Brown, Green, Longmans, and Roberts, 1857); Ann Parry, *Parry of the Arctic: The Life Story of Sir Edward Parry, 1790-1855* (London: Chatto and Windus, 1963).

Locations: N.F. Nash, Rare book & Special Collections Library, University of Illinois Library at Urbana-Champaign, 1408 West Gregory Drive, Urbana, IL 61801.

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Emigrant Soldiers Gazette and Cape Horn Chronicle. London: R. Wolfenden, 1907.

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The International Institutional Press Association
1966-1968

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Running Head: IIPA

The International Institutional Press Association
1966-1968

Abstract

A research project examining the role of a patient run newspaper at Central State Hospital in Milledgeville, Georgia, uncovered the newspaper's affiliation with an organization known as the International Institutional Press Association (IIPA). Only one document affiliated with this organization was available through the Library of Congress, a 1968 Directory of Members. The Editor of the Directory was located in Bremerton, Washington. Several oral and written interviews, along with the Editor's personal collection of materials, established a history of the International Institutional Press Association. This paper is a first step toward documenting the IIPA's existence, purpose and ideology for media historians.

Introduction

A way of life that no longer exists is still evidenced today on the grounds of Central State Hospital. Originally called the State Lunatic, Idiot and Epileptic Asylum, the facility opened its doors in 1842 and the first patient arrived chained to the back of a wagon (Cranford, 1987, p. 5). The grounds still shelter the silence which pervaded institutional life for over a hundred years. Even older oak trees, cradle the series of buildings dedicated to patient housing since the turn of the century. For years, institutions like Central State Hospital not only housed the mentally ill, but the unwanted mentally well. During the 1960s, the patient population reached 19,000--making Central State Hospital the fifth largest city in Georgia (Union Recorder, 1992). Like other cities, the Hospital had its own post office and its own newspaper. Founded in 1934 and operated until 1978, *The Builder*, was a weekly patient newspaper, written and produced by the patients for others institutionalized, their families, community residents and community leaders (*Annual Report*, 1948). *The Builder* contained current news, editorials, social facts, recreational schedules, advertisements and even a crossword puzzle.

A 1974 copy of The Builder included one line under its mast, **Member of the International Institutional Press Association** (IIPA) (Figure 1). Hoping that the IIPA could provide information regarding other patient produced newspapers, an effort was made to contact the Association. This paper documents the existence of the International Institutional Press Association from 1966-1968 and its significance in legitimizing institutional journalism.

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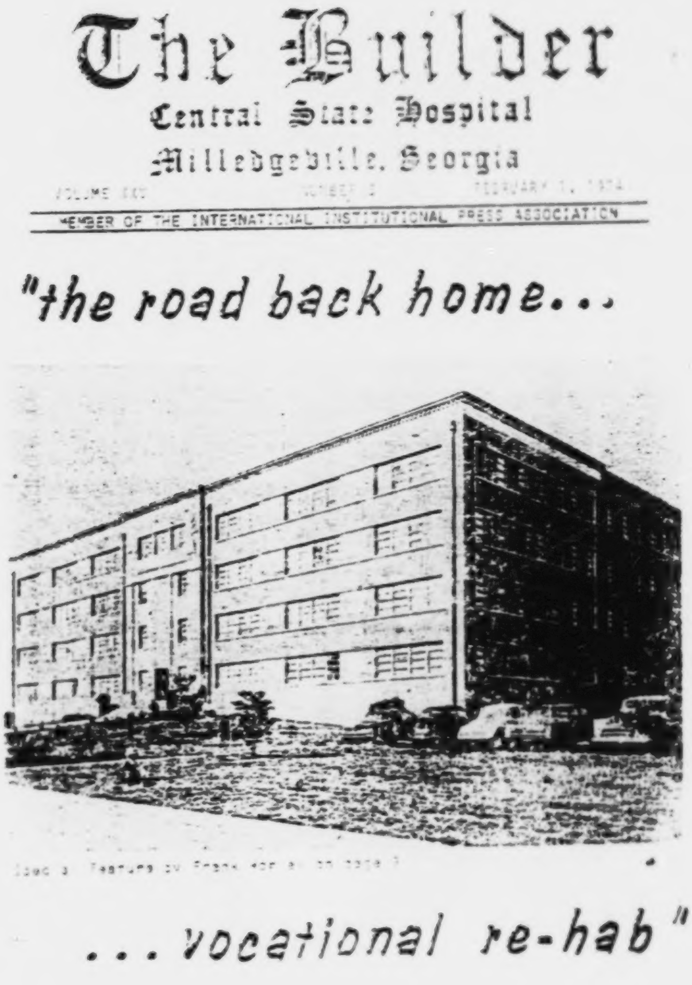
Figure 1

The Builder

February 1, 1974



The Builder

Central State Hospital

Milledgeville, Georgia

MEMBER OF THE INTERNATIONAL INSTITUTIONAL PRESS ASSOCIATION

"the road back home...

...vocational re-hab"

Figure 1. The front page of the patient run newspaper at *Central State Hospital*. Dated February 1, 1974.

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Discovering the IIPA

Gwendolyn Clark, a former Central State Hospital employee and secretary for *The Builder*, remembered patients deciding to include the IIPA logo with its mast (Clark, 1996). Clark recalled that the current editor thought that including the association made the paper, "look more professional and credible" (Clark, 1996). Earlier versions of *The Builder* listed the association, although the Director of *The Builder* during the 1960s has no recollection of "joining" the IIPA (Boone, 1996).

A library search for the IIPA, found only one document, a 1968 directory located at the Library of Congress. The cover of the directory listed Justin Serely as the Director of the IIPA and also his position as "Supervisor of Vocational Education and Editor of *The New Leaf*"(IIPA, 1968). *The New Leaf* was a newspaper produced by the residents at the juvenile home where Serely was employed.

Within the directory, Justin Serely's name appeared under the state of Washington, as an IIPA Board Member. An Internet search located Serely in Bremerton, Washington. He was contacted by telephone and when asked about the document at the Library of Congress commented, "Oh...sure. I sent that in because I thought some library should have a copy" (Serely, 1996). Serely consented to several telephone interviews and a written interview. Serely was also able to provide four editions of the directory, the IIPA's only publication.

Institutional Journalism

Institutional journalism, mostly prison journalism, has peaked the interest of a variety of scholars, but the foremost author on the subject is Russell Baird. In 1967, Russell Baird wrote *The Penal Press*, which detailed his study of prison journalism in the United States. Baird has no

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recollection of the IIPA and it appears his study was completed just a few months prior to Serely's creation of the IIPA (Baird, 1997).

In his text, Baird dated the first prison newspaper to Monday, March 24, 1800 (Baird, 1967, p. 19). Called *The Forlorn Hope*, the paper was dedicated to bringing an end to imprisonment for debt. *The Forlorn Hope* appears to have been a unique occurrence. Publication of prison newspapers did not reappear until the late 1800s. Many of those who "worked" for the prison press were former newsmen who had held a variety of positions on local newspapers (Baird, 1967). Baird noted a drastic increase in prison newspapers from 1950-1960. He attributed the growth to the correlating rise of inmates and prison administrative reform.

> Increased attention to rehabilitation rather than punishment, an awakened understanding of the importance of communication in any society, and increased freedom and responsibility have served to make prison publications the rule rather than the exception. (Baird, 1967, p. 47)

Baird noted that at the time of publication of his book, prison journalism was a vital part of prison society.

Perhaps of consideration to institutional journalism, more so than other areas of journalism, is that it required the express permission of the Warden or Hospital Superintendent in order to exist. Twenty percent of administrators reported in 1965 that the paper had caused problems for the institution, however they felt the communicative and rehabilitative environment the papers' fostered was worth the complications. Baird (1967) noted that even though that was the current mood of administrators, prison newspapers would continue to be on trial for the duration of their existence.

Administrators and wardens were asked what objectives they had for the prison press and they provided seven primary areas:

1. To provide an outlet for creativity.
2. To improve morale of inmates.
3. To give inmates a constructive way to spend their time.
4. To provide journalistic training.
5. To give officials a means of communication with inmates.
6. To give officials and inmates an opportunity to make the public aware of penology problems.
7. To provide vocational printing and training. (Baird, 1967, p. 50).

Baird interviewed inmate editors, in order to determine if they had adopted similar objectives. Most identified similar objectives, however prisoners stressed the significance of their paper to the "outside world." Several noted the newspaper's ability to shine light behind the walls of prison and help the convict become a human being to those on the outside. Others noted the difficulty of being the middle man, having to write the grievances of inmates and the administrative viewpoint as well (Baird, 1967, pp. 53-57).

During the growth of prison journalism, the commercial press became interested and during the 1940s and 1950s several articles appeared hilighting the work of inmates (Spector, 1945; No. 49040, 1965). Prisoners also entered writing contests where their work won prizes and recognition (Spector, 1964).

Perhaps no other inmate editor has received as much attention as Wilbert Rideau, editor of *The Angolite* (Figure 2), a prison magazine and former member of the International Institutional Press Association. In 1993, describing Rideau as the most rehabilitated prisoner in America, *Life* magazine featured Rideau's contributions to the penal press.

Figure 2

The Angolite

January/February 1996

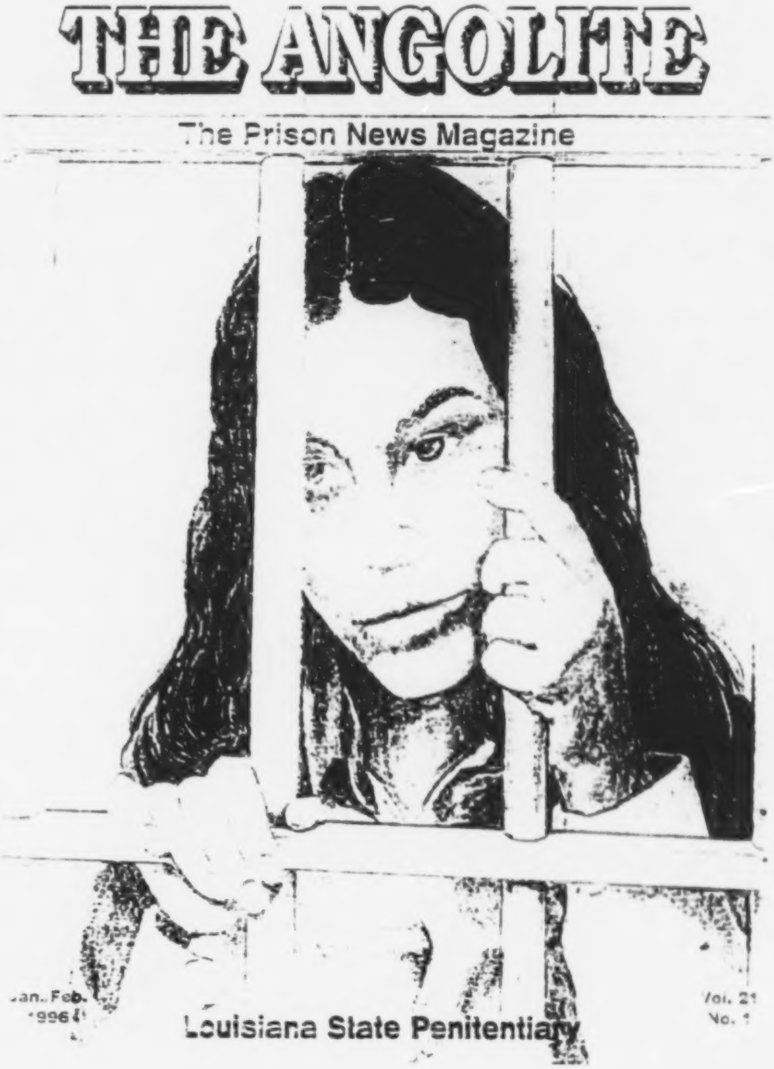
THE ANGOLITE
The Prison News Magazine
Jan.-Feb. 1996
Vol. 21 No. 1
Louisiana State Penitentiary

Figure 2. The cover of the prison news magazine, *The Angolite*. Dated January/February 1996.

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Rideau, imprisoned for a murder he committed in 1961 at the age of 19, has been the editor of *The Angolite* since 1975 when a new warden decided to "change" things at Angola State Penitentiary in Louisiana. Rideau had been denied access to working on the prison publication on prior occasions because he was black. Since 1975, under Rideau's leadership, *The Angolite* has been recognized for its outstanding content. Rideau said that he quit entering the penal press competitions sponsored by various media and prison associations because *The Angolite* would win in every category (Rideau, 1996). Rideau thought it was unfair to the other inmate populations who were attempting to publish material without the support and resources he was granted at Angola. In national competitions, Rideau has reaped the benefits of his hard work, winning several national awards (Colt, 1993).

Rideau recognizes that his First Amendment freedoms can be limited by a warden, but says he currently feels as if he enjoys as much First Amendment freedom as any other publication (Rideau, 1996). Rideau and co-editor Ron Wikberg have even raised the issue of whether they should be protected under reporters' shield laws. In a Mississippi case, Rideau and Wikberg were subpoenaed to testify at a murder-conspiracy trial. Normally, a judge would threaten a journalist with imprisonment for refusing to testify. Rideau and Wikberg, already imprisoned, refused to testify. Their shield law status was never tested because the prosecution failed to convince the judge their testimony was essential to the case (Horton, 1992).

At Angola State Penitentiary the function of *The Angolite* is described by Rideau as:

> The ability to serve our prison community in the same manner and for the same purposes as the *New York Times*, *Washington Post* and *Los Angeles Times* serves their respective readership (Rideau, 1996).

According to Sneed and Stonecipher (1991), the First Amendment rights of prisoners is an emerging issue that has yet to be considered by the Supreme Court. Citing Baird's work in 1967, the authors noted that prison journalists who have challenged an administrator's content control or other journalistic freedoms have won three out of four cases since Baird's documented study of prison journalism.

The available literature on prison journalism is scarce, but the available literature on mental hospital patient journalism is nonexistent. The profession of journalism "accidentally" appeared at mental hospitals as early as 1918 with the introduction of Occupational Therapy (*Maryland*, 1918). Occupational therapist were employed to train injured soldiers for new occupations. The operation of a printing press, provided an occupational skill, some physical therapy and did not require the use of legs. Journalism, an apprentice trained occupation at that time, was a byproduct of "Printing Therapy" (*American Type*, 1945).

An anthology of patient work at Saint Elizabeth's Hospital in Washington, DC has a short summary of the role of mental patient journalism as reported by the patient editor of the publication.

> A young student of journalism, seeking material for a term paper on "Journalism as Therapy for the Mentally Ill," came to us one day with this question: Just exactly what is the main purpose of newspapers like *The Elizabethean* and *The Howard Hall Journal*?" (J.K., 1949, p. 5)

The patient editor goes on to explain that for a while he was "stumped" and that after some consideration developed the following statement.

> We (*The Elizabethean* staff) believe that, like every other planned activity in St. Elizabeth's, the main purpose of these newspapers is to add whatever they can toward making life more constructive and productive, more interesting and more pleasant for the patients.

John Holsenbeck (1996), was the Central State Hospital staff supervisor of *The Builder* during the late 1960s and most of the 1970s. He described the newspaper's function as "doing what every newspaper in America does--inform the reader."

Perhaps the prison inmate has been perceived as more functional than the mentally ill patient. Admittedly, one does not normally consider the mentally ill as having the capacity to produce a weekly newspaper. Of importance to the perception of the mental patient editor is an understanding of the patient population during the height of institutional publications, the 1960s. During the 1960s, Central State Hospital reached its maximum population of 19,000. One psychiatrist on staff noted that if he were to see all of his patients in one day, they would have to form a line and run past his open door (Cranford, 1987). The patient population included the gravely mentally ill, but it also included thousands of people who would not be considered appropriate for institutionalization today. These patients were the ones that served as staff members of *The Builder*. Most staff members were recovering alcoholics and drug addicts, war veterans and what Cranford (1987) described as the "unwanted." Holsenbeck's staff included several college graduates, including two doctorates of philosophy, media reporters, nurses and other functioning adults. The staff was a mixture of long term patients and short term patients. Patients who worked on the newspaper had the capacity to conduct the vocation of journalism.

Researchers may be tempted to place institutional journalism within the same category as house organs. House organs are company publications produced for the employee. During the 1950s, students of journalism and public relations began to be trained to write for house organs. One manual suggested that a company newspaper should be printed on news print to give the impression that it was a real newspaper (Biklen & Breath, 1945). The main goal of house organs was to improve employee relations (Cadigan, 1961). Editors of house organs associated themselves in 1925 as the Industrial Editors Association and later combined with smaller existing associations to create the International Council of Industrial Editors. The term industrial journalism was coined to describe this "new" kind of journalism.

Institutional journalism does not meet the standards set forth by industrial journalism. The role of publications within institutions has been determined by penal editors and Baird's study in 1967, to be one of multiple roles. These roles were outlined in draft work for a Penal Press Association that never came to pass (Figure 3).

Baird (1967) described the prison editors desire to communicate with other prison editors. Even though not formerly structured, prison editors referred to the Penal Press Association during interviews. Baird noted that many editors had attempted to formally organize the association in order to adopt standards of practice many felt were desperately needed and to gain strength through union. One editor even described the equivalent of what would be a "wire service" where inmate copy could be exchanged for reprint in various institutions. All attempts to formally

Figure 3

Penal Press Creed

Proposed Purposes of a Penal Press Association

1. To establish co-operation and encourage good relations among the various penal publications in the United States.
2. To elevate the quality of journalism in the Penal Press.
3. To encourage ethical, moral and truthful journalism in the Penal Press.
4. To further the exchange of ideas, information and discussion concerning problems peculiar to inmates of penal institutions relative to their welfare, rehabilitation, or correction.
5. To provide educational stimulation to inmates of penal institutions by means of the penal press.
6. To encourage high quality in the literary efforts of inmates of penal institutions.
7. To discourage plagiarism, irresponsible criticism and bad taste in the penal press.
8. To serve as a link between inmates of penal institutions and those members of society at large concerned with their welfare while inmates, and after their return to society.
9. To alert public opinion in society at large to problems incident to and affecting inmates and penal institutions.
10. To promote understanding between inmates of penal institutions and the general public.
11. And generally, to focus the efforts of all member penal publications toward the achievement of wholesome and enlightened penology and correction for the rehabilitation of inmates of penal institutions.

Figure 3. Penal Press Association Creed as printed by an Indianian prison journalist (Baird, 1967, pp. 60-61).

establish a penal press association failed because of what inmates described as a too involving a task for a prisoner.

Even though not formally organized the Penal Press Association did accomplish what Baird (1967) described as a "great deal." Baird noted

> Any member from within a penal institution automatically becomes and remains a member simply by indicating that it has accepted membership. It is understood, though there is no formal pledge, that certain standards and obligations will be observed by PP members. A mutual exchange of publications and the right of reprinting from other members, provided credit is given, seem to be the major benefits of membership.
>
> (Baird, 1967, p. 60)

Various prison editors attempted to create a list of standards and purposes to guide their work. These were printed in various publications. One editor in Indiana created a credo and printed it in his newspaper. When mailed to other institutions, several inmates printed the credo as if to indicate their acceptance. The quality of these standards, speak to the singular function of institutional journalism and legitimize its deserved separateness from industrial journalism or comparisons to house organs.

The International Institutional Press Association

In Chehalis,Washington in 1965, Justin Serely, who had taken over the responsibility of supervising a state juvenile facility's print shop and subsequent monthly publication, became interested in exchanging information with other institutional editors. He compiled a list of penal institutions in the United States and mailed 213 letters requesting information about existing penal publications. He received 39 replies with verification of 114 publications. These verifications composed the first Directory of Institutional Publications. On the back cover, Serely requested from those that received the directory to send verification of their publication's existence (a copy) and mailing address in order to be listed in their publication. Serely also requested that *The New Leaf*, his publication, be placed on their mailing list so that they could begin to exchange publications. Beginning that year, Serely said that each day he gathered the mail there would be several institutional publications flooding his mailbox (1996).

Even though Serely's project had begun as a penal press endeavor, several mental hospitals began submitting their publications as well. In the United States, prisons are often found adjacent to mental institutions and share staff. In 1965, Serely verified the existence of seven mental hospital patient newspapers and by 1968, that number had risen to 56 international and national mental hospital patient publications (*IIPA Directory*, 1965 & 1968).

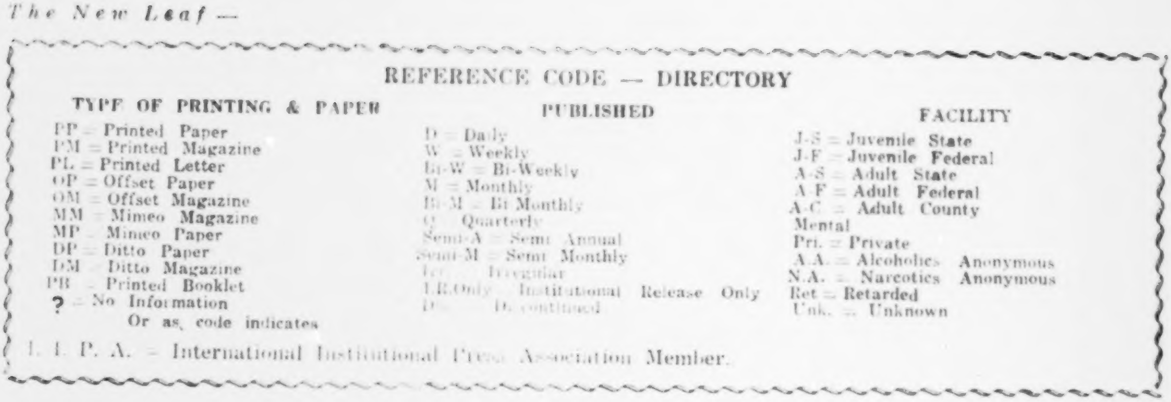
After the first directory's success, Serely began compiling information for a second edition. Communication between other editors also led to the idea of creating an association of institutional publications. By September of 1966, Serely had compiled a list of 445 possible United States publications and 22 Canadian publications. He sought verification for the existence of each of these and used the facilities at the Green Hill School in Chehalis, Washington to print the directory and mail copies to each of the Institutions. A supplement was printed in September of 1966 after several hundred new publications confirmed their existence.

In 1967, Serely added a reference key (Figure 4) to aid the reader. The reference key provided an opportunity for Serely to share with institutions, not only the number of institutional publications, but how often they were published, in what form and from what facility. Today, Serely's key offers media historians a detailed overview of what the institutional

Figure 4

Key

Directory of Institutional Publications, 1967



The New Leaf —

REFERENCE CODE — DIRECTORY

TYPE OF PRINTING & PAPER

PP = Printed Paper
PM = Printed Magazine
PL = Printed Letter
OP = Offset Paper
OM = Offset Magazine
MM = Mimeo Magazine
MP = Mimeo Paper
DP = Ditto Paper
DM = Ditto Magazine
PB = Printed Booklet
? = No Information
Or as, code indicates

PUBLISHED

D = Daily
W = Weekly
Bi-W = Bi-Weekly
M = Monthly
Bi-M = Bi Monthly
Q = Quarterly
Semi-A = Semi Annual
Semi-M = Semi Monthly
Irr = Irregular
I.R.Only = Institutional Release Only
Dis = Discontinued

FACILITY

J-S = Juvenile State
J-F = Juvenile Federal
A-S = Adult State
A-F = Adult Federal
A-C = Adult County
Mental
Pri. = Private
A.A. = Alcoholics Anonymous
N.A. = Narcotics Anonymous
Ret = Retarded
Unk. = Unknown

I. I. P. A. = International Institutional Press Association Member.

Figure 4. Key created by Justin Serely regarding printing, facilities and publication. First appeared in 1967 edition of *Directory of Institutional Publications.*

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press looked like during the late 1960s. Serely also began to add a listing of unverified publications, in hopes of securing more confirmations. During this same year, the idea to create an association around the directory formally materialized. Through correspondence with inmates and mental patients at a Washington, DC facility, a Board of Directors for the International Institutional Press Association was appointed and a statement of purpose adopted (Figure 5).

The statement of purpose for the International Institutional Press Association expresses a dedication to the field of journalism and its ability to bring about positive outcomes for the institutionalized. The IIPA designated its purpose as, the ability to make available institutional publications to external and internal audiences. The IIPA Directors wrote "that interaction propagates education, enlightenment and mutual understanding..." (Serely, 1968, p. 2).

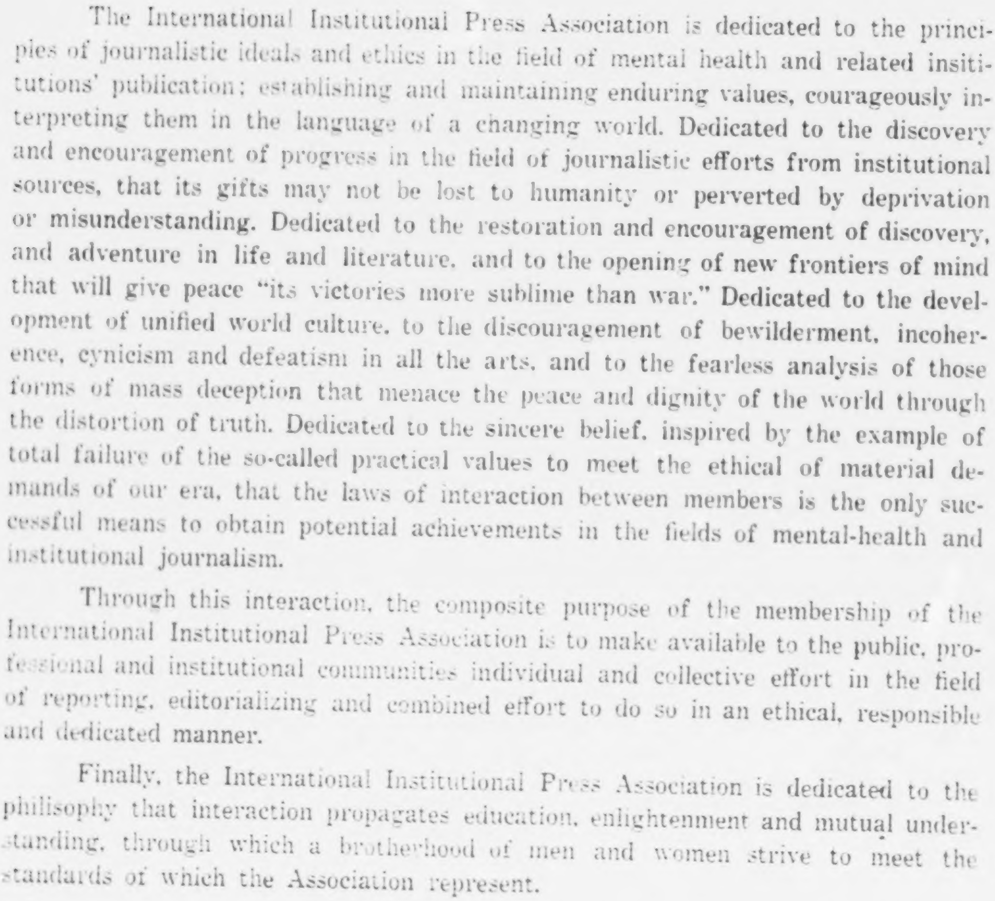
The membership status of institutional publications was noted in the 1968 directory. Even though Serely's work had started out as a way to link penal institution publications together, the majority of IIPA members were from mental hospitals. In 1968, a total of 710 institutional publications are listed in the directory, 95 institutions were listed as IIPA members and 65 of those were mental hospital patient publications. Perhaps editors and staff members of newspapers produced by mental patients were hungry for an association that would add credibility to their endeavors. The desire for mental patients to become IIPA members also served as a testament to their level of functioning and abilities.

Patients who worked on *The Builder* at Central State Hospital and *The Elizabethean* at St. Elizabeth's Hospital in Washington, DC were the most rehabilitatable and had shorter stays in the hospital. Boone (1997) and Holsenbeck (1996) reported that patients who staffed the newspaper

Figure 5

International Institutional Press Association

Statement of Purpose



The International Institutional Press Association is dedicated to the principles of journalistic ideals and ethics in the field of mental health and related insititutions' publication; establishing and maintaining enduring values, courageously interpreting them in the language of a changing world. Dedicated to the discovery and encouragement of progress in the field of journalistic efforts from institutional sources, that its gifts may not be lost to humanity or perverted by deprivation or misunderstanding. Dedicated to the restoration and encouragement of discovery, and adventure in life and literature, and to the opening of new frontiers of mind that will give peace "its victories more sublime than war." Dedicated to the development of unified world culture, to the discouragement of bewilderment, incoherence, cynicism and defeatism in all the arts, and to the fearless analysis of those forms of mass deception that menace the peace and dignity of the world through the distortion of truth. Dedicated to the sincere belief, inspired by the example of total failure of the so-called practical values to meet the ethical of material demands of our era, that the laws of interaction between members is the only successful means to obtain potential achievements in the fields of mental-health and institutional journalism.

Through this interaction, the composite purpose of the membership of the International Institutional Press Association is to make available to the public, professional and institutional communities individual and collective effort in the field of reporting, editorializing and combined effort to do so in an ethical, responsible and dedicated manner.

Finally, the International Institutional Press Association is dedicated to the philisophy that interaction propagates education, enlightenment and mutual understanding, through which a brotherhood of men and women strive to meet the standards of which the Association represent.

Figure 5. The adopted Statement of Purpose of the International Institutional Press Association. First appeared in 1968 directory of members.

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were mentally **well**, usually suffering from addiction or placed involuntarily at the institution by a family member who found them inconvenient. In the 1968 directory, a number of newspapers and newsletters listed an affiliation with Alcoholics Anonymous. This also served as a testament to the fact that many of those who worked within mental patient journalism were not gravely mentally ill. None of the AA groups were listed as members of the IIPA, but several did trade their publications with Serely (1996).

No dues were collected by the IIPA. Serely said the organization only requested that institutions mail their publications to like institutions. By the close of 1968, Serely reported that he and the other IIPA members were exchanging publications with over 700 institutions worldwide. Shortly thereafter, Serely changed positions and left the IIPA. Since the IIPA board was comprised of prison and patient administrators, the maintenance of the organization without Serely was precarious at best. No documentation of further directories or correspondence exists after 1968.

Conclusions

The involuntarily institutionalized banded together briefly between 1966-1968 to create the International Institutional Press Association. IIPA membership allowed for the exchange of institutional publications produced by inmates and mental patients. Because those who are institutionalized are often considered as less capable, the IIPA offered an opportunity for legitimization in the outside world.

The IIPA also considered a set of institutional press operational guidelines that were delimited in the Association's Statement of Purpose. Clearly, members perceived themselves as journalists, adopting the journalistic practices of ethics, truth and responsibility.

The directories of institutional publications produced by Justin

Serely from 1965-1968, also provide the only documented evidence of mental hospital patient journalism. Perhaps the contributions of this select group of journalists have been overlooked because of predetermined attitudes that residents of mental hospitals could not possibly serve a legitimate journalistic function. The directories offer an avenue of further inquiry to answer this question. Media historians can use the directories to locate preserved collections of mental patient newspapers. A review of these documents would offer substantive answers regarding the role of institutional journalism.

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Law Division

44 Liquormart

A Prescription for Commercial Speech:

Return to *Virginia Pharmacy*

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ABSTRACT

The U.S. Supreme Court unanimously overruled a liquor price advertising ban last year in *44 Liquormart v. Rhode Island,* raising the possibility that commercial speech doctrine is headed for a major change.

Already the impact has been felt in three federal circuits, even though there was no clear majority backing the main opinion's strong support for 1st Amendment protection for commercial speech. The Court has since reversed and remanded two cases for reconsideration in light of *44 Liquormart,* in the Fourth and Fifth Circuits. In the Ninth Circuit, an appeals court panel unanimously invalidated a ban on broadcasting casino ads, relying in large part on *44 Liquormart.*

As a result, the authors feel the stage has been set to retire *Central Hudson* as the focus of commercial speech analysis and replace it with the more liberal, and predictable, rationale found in *Virginia Pharmacy Board v. Virginia Citizens Consumer Council.* That 1976 decision afforded 1st Amendment protection to advertising as long as it is truthful, not misleading, and promoting a legal product.

While *44 Liquormart* was decided using the *Central Hudson* four-part test, Justice John Paul Stevens, author of the main opinion, wrote at length about the evils of government regulation of advertising for paternalistic ends, a key component in the *Virginia Pharmacy* decision.

The authors believe the *44 Liquormart* decision points to a new approach to commercial speech doctrine, based on an old, but respected, case.

Introduction

Using a conservative approach to interpreting Supreme Court opinions, the ruling in 44 *Liquormart v. Rhode Island* simply overturned a state regulation banning off-premises advertising of liquor prices.[1] While the opinion was unanimous, none of the critical reasoning drew a majority.

That could be the end of the analysis, given the shifting alliances found in the eight-part opinion of the Court written by Justice John Paul Stevens, followed by no fewer than three concurrences. One recent commentator, discussing subsequent commercial speech cases at the federal appellate level, found the 44 *Liquormart* decision "ambiguous."[2]

But to end it there would be short-sighted in the authors' view.

Two early tests of 44 *Liquormart*'s import suggest the case, while not a landmark itself, presages the direction the Court will take in commercial speech litigation. Arguably, that direction should be to replace reliance on the formulaic

Central Hudson Gas & Electric Corp. v. Public Service Commission[3] with the venerable *Virginia State Board of Pharmacy v. Virginia Citizens Consumer Council, Inc.*[4]

In Part I, this paper fits 44 *Liquormart* into the pantheon of commercial speech decisions of the last 20 years. Of particular note is the favorable commentary on *Virginia Pharmacy* found in 44 *Liquormart*[5] voiced by Stevens and by Justice Clarence Thomas in his concurrence.[6] Two cases recently remanded by the Court in the wake of 44 *Liquormart* could have helped to cement that opinion's place in the checkered history of the commercial speech doctrine.[7]

In the earlier one, *Anheuser-Busch v. Schmoke*, the Fourth Circuit stood fast on its pre-44 *Liquormart* decision to support Baltimore's ban on billboards advertising alcohol and tobacco products, although the once-unanimous decision slipped to 2-1.[8] The Court chose not to hear the second appeal, allowing the ban to stand.[9] In the other, the Fifth Circuit got back a case (*Greater New Orleans Broadcasting Association v. United States* [GNOBA])[10] involving a challenge to the Federal Communications Commission's ban on advertising casino gambling. This case offered the Court the opportunity to sustain the ban by citing its decision in *United States v. Edge Broadcasting*.[11] Instead, the Court granted certiorari, vacated the decision and remanded the case for reconsideration in light of 44 *Liquormart*.[12] It is always risky to read more into a remand than the stark language of the order, as shown by the result of the Baltimore remand, but if a majority of the Court did not see *Edge* as controlling in GNOBA, that may hearten commercial speech advocates.[13]

Part II is an analysis of the language and the implications of 44 *Liquormart.* If the opinion sends mixed signals, as some contend,[14] what is the basis for the confusion? If, as the authors contend, the signals just need careful scrutiny, what impact will this decision have on future commercial speech cases? The Court's approach to commercial speech has been less than a model of clarity in recent years, extending First Amendment protection in one case only to withdraw it in the next.[15] There is no clear majority in 44 *Liquormart,* but it moves commercial speech doctrine back under the 1st Amendment umbrella after a brief departure in *Florida Bar.* While Stevens could command only two or three votes for his most sweeping proposals, nothing he wrote produced any dissents.

(What is difficult to divine is why Stevens, arguably the harshest critic of commercial speech restrictions,[16] was assigned to write the opinion. The Chief Justice, Stevens' ideological opponent on commercial speech,[17] had the entire bench to choose from in assigning the opinion, since there was a unanimous vote to reverse.[18])

In Part III, the conclusion, the authors prescribe a return to *Virginia Pharmacy* to cure what ails commercial speech.

Part I

More than half a century of commercial speech litigation precedes 44 *Liquormart,*[19] but the two cases with the most influence on this opinion date only to the mid-70s. The first was *Bigelow v. Virginia* in 1975.[20] The editor of a weekly newspaper defied a Virginia statute that forbid dissemination of information about abortions through advertising. He published an ad informing his readers of the legal availability of abortions in New York state. He fought the fine the state imposed and appealed all the way to the nation's highest court. Writing for the majority, Justice Harry Blackmun signaled that the court was about to move sharply away from the notion that advertising deserved little First Amendment protection. First, he noted that *Valentine v. Chrestensen,* the case that introduced the concept of commercial speech, "obviously does not support any sweeping proposition that advertising is unprotected *per se.*"[21] (Actually, *Chrestensen* was so bereft of analysis that it offered little upon which to base any future decisions, but it still had served as the underpinning for an attitude on the Court that left advertising well short of any First Amendment protection for more than 30 years.) Blackmun went on to distinguish the two cases by observing that the ad in Jeffrey Bigelow's weekly "did more than simply propose a commercial transaction."[22] The Court found a substantive difference between the language in the abortion ad and the language in F.J. Chrestensen's handbill regarding tours of his WW I-era submarine. The former was deemed "factual material of clear 'public interest'" while the latter apparently was something else. In *Bigelow* the Court struck down a regulation prohibiting advertising of a service that was legal where it was performed.[23]

That decision greatly troubled then-Associate Justice William Rehnquist, who dissented. He pointedly observed that the majority had focused on the content of the ad to determine the amount of First Amendment protection to apply. "This was a proposal to furnish services on a commercial basis, and since we have always refused to distinguish for First Amendment purposes on the basis of content, it is not different from an advertisement for a bucket shop operation or a Ponzi scheme which has its headquarters in New York," Rehnquist wrote,[24] apparently discounting the fact that both of his examples would have been illegal in New York.

The next year, in *Virginia Pharmacy*, the Court overturned a state statute that prohibited price advertising of prescription drugs. The state contended that the statute helped maintain the professionalism of its pharmacists. The Court agreed that the state had a substantial interest in regulating the conduct of pharmacists, but found that the regulation did not advance that interest.

Further, Justice Blackmun, again writing for the majority, noted that, even though the speech involved did no more than propose a commercial transaction, it was still protected speech. For the first time, the Court took into consideration the rights of those for whom the message was intended. The consumer's interest in knowing the price of prescription drugs "may be as keen, if not keener by far, than his interest in the day's most urgent political debate."[25] The Court then proceeded to balance the consumers' interests against those of the state and found that the state had other remedies it could use to achieve its goals without infringing on speech, even commercial speech.

Although the majority stopped short of extending full First Amendment protection to commercial speech (using a curious argument that it was hardier than political speech and more easily verified), Rehnquist again objected to the majority's willingness to substitute its judgment for that of the Virginia legislature, believing that the potential for abuse of the product should have tilted the case in favor of the state. Rehnquist believed that the majority opinion had offered full 1st Amendment protection for all advertising unless it was misleading or promoting an illegal product.[26] Rehnquist's willingness to defer to legislative judgment was also apparent in his dissent in *Carey v. Population Services International* in 1977.[27] There, he argued that the prohibition on contraceptive advertising should be upheld on the general grounds that a state should be able to legislate public morality, accepting the state's argument that such advertising might encourage sexual activity among young people. The majority overturned the ban, rejecting the state's argument favoring a sort of benign ignorance among teenagers on this sensitive subject.

Also in 1977, the Court began issuing a series of decisions on lawyer advertising with *Bates v. State Bar*.[28] Presaging its opinion in *44 Liquormart* over a price advertising ban, the *Bates* Court rejected the state's contention that price advertising was inherently misleading and too difficult to monitor.

Finally, the Court summarized a hectic five years of commercial speech litigation with its four-part test in *Central Hudson Gas & Electric Corp. v. Public Service Commission*.[29] The case grew out of the Arab oil embargo of 1973, when oil stocks were depleted, and New York's utility regulatory agency was intent on promoting conservation. The Public Service Commission ordered electric utilities (which were burning oil to generate electricity) to cease all advertising that promoted the use of electric power. After the crisis eased, though, the Commission extended the ban, and Central Hudson sued. After losing through the state court system, the utility prevailed before the Court.

The significance of *Central Hudson* was the adoption of a framework within which all commercial speech regulations would be judged. Regulations that did not fit would be ruled unconstitutional. The Court appeared to be moving away from an ad hoc balancing approach to a more predictable formula. The four parts were: 1) Is the advertising itself false or misleading, or does it promote an illegal activity? 2) Is the state's interest being protected by the regulation substantial? 3) Does the regulation directly advance the state's interest? and 4) Is the regulation "more extensive than is necessary to serve that interest?"[30]

If the answer to the first question was a negative, then the state had to be able to answer the remaining three as: Yes, Yes and No. Prophetically, the Court noted that it was particularly suspicious of speech bans that:

> ...entirely suppress commercial speech in order to pursue a nonspeech-related policy. In those circumstances, a ban on speech could screen from public view the underlying governmental policy.[31]

(Just so, argued the plaintiff's lawyer in *44 Liquormart*: The state was using the ban on price advertising to protect a class of merchants [Rhode Island Liquor Store Association members] from competition. The state not only denied the allegation, but argued that the Court should not even allow it to be advanced.[32])

In addition to creating the four-part test in *Central Hudson*, the Court continued its practice of independently reviewing the state's assertion of a substantial interest. One commentator has contended that the Court's track record from *Virginia Pharmacy* to *Central Hudson* suggested that the Court fully intended to follow a policy of independent review rather than deference to the findings of legislative bodies.[33]

The few cases that used the *Central Hudson* test prior to the remarkable decision in *Posadas de Puerto Rico Associates v. Tourism Co. of Puerto Rico*,[34] did not offer any clear pattern of the Court's long-range plans for its new test. The Court upheld a billboard ban in *Metromedia v. City of San Diego*,[35] finding that the city's interests in traffic safety and aesthetics were legitimate, and the ban was no more extensive than necessary. Some have argued that there was significance in the fact that *Central Hudson* was decided on the basis of a regulation's content, while *Metromedia* was content-neutral.[36] The claim was that the Court accorded the state interest greater deference because the regulation was content-neutral. If the distinction had merit, the decisions since *Posadas* have probably stripped it of all vitality. In fact, the only notable development in this period was Rehnquist's shift to the other side, found in his concurrence in *Bolger v. Youngs Drug Products Corp.*[37] Rehnquist agreed with the majority's view that, while the state's interest in allowing parents to inform their children about birth control methods was legitimate and substantial, suppressing all contraceptive advertising through the mails was more extensive than necessary. Rehnquist noted in his concurrence that parents had an alternative -- removing themselves from mailing lists for contraceptive products. However, it became apparent in *Posadas* that Rehnquist had not changed his mind about commercial speech, just his approach.

In a 5-4 ruling that has been endlessly dissected,[38] the Court upheld Puerto Rico's ban on casino advertising directed at island residents. Rehnquist, writing for the majority, accepted at face value the territory's contention that its ban would reduce local interest in gambling to prevent "serious harmful effects on the health, safety and welfare" of its citizens, even though they still had just about every other form of gambling yet invented available to them and freely advertised. Leaving no doubt as to his preference in dealing with this branch of speech, Rehnquist wrote that because the territory had the right to ban the activity -- gambling -- it must, logically, have the right to ban speech about the activity, as if such speech were a lesser-included component. As for whether there was a connection between the state's asserted goal and the method used to achieve it, Rehnquist commented that if the regulation did not do what the Puerto Rico legislature hoped it would, the casino would not have sued to overturn the regulation.[39]

The decision simply ignored *Virginia Pharmacy,* which had forbidden the complete suppression of truthful advertising. The majority there had held that the state could not "completely suppress the dissemination of concededly truthful information about entirely lawful activity, fearful of that information's effect upon its disseminators and its recipients."[40] The same issue was discussed in *Central Hudson* with the same result: "We review with special care regulations that entirely suppress commercial speech in order to pursue a nonspeech-related policy."[41] But Rehnquist did not deal with precedent that contradicted his position. He ignored the holding in *Virginia Pharmacy* and even in *Central Hudson,* although he purported to follow it. When it came to *Bigelow* and *Bolger,* he distinguished them from *Posadas* by noting that the underlying activity was constitutionally protected in those cases, and thus speech about those activities was protected as well. The fact that neither of those cases was decided on constitutional grounds related to the underlying activity seemed not to concern him.

With the constraints on regulating commercial speech under the *Central Hudson* test thus loosened, Justice Antonin Scalia had no trouble wriggling past the rules in his majority opinion in *The Board of Trustees of the State University of New York v. Fox,*[42] a case involving the state university system's regulation banning commercial enterprises from operating on campus. At stake was a student's desire to hold a Tupperware party in a dorm room. In *Fox,* the Court simply abandoned the "least restrictive means" portion of the *Central Hudson* test (Part Four) and replaced it with one calling for a "fit between the legislature's ends and the means chosen to accomplish those ends... – a fit not necessarily perfect, but reasonable."[43] Scalia held that this represented the distilled wisdom of earlier commercial speech cases, leaving some to wonder what cases he had been reading. Certainly not *Bigelow, Virginia Pharmacy* or even *Central Hudson.*

Since the decision in *Fox,* most of the commercial speech cases before the Court have followed no discernible pattern. The decisions handed down in this decade are distinguishable, but only by delving into the facts to find differences that account for the varied outcomes. In 1993, in *Edenfield v. Fane,*[44] a Florida statute that forbid personal solicitation of clients by accountants was overturned. Later that same year, the Court also overturned a Cincinnati statute that discriminated against newsracks for shoppers – free papers containing mostly advertising -- on street corners.[45] But just three months later, the Court upheld a federal statute that forbid broadcasters from advertising lotteries if the broadcasters were licensed in a state that prohibited lotteries.[46] This was a case where, as in *Bigelow,* the activity was legal where carried out, but the Court upheld the regulation anyway. A year later, back in the professional arena, the Court overturned another Florida regulation that forbid a lawyer from using "CPA" and "CFP" after her name.[47] Then, in April 1995, the Court decided the *Coors* case in favor of the brewer, overturning a federal regulation on beer labeling as hopelessly confused and in violation of *Central*

Hudson because it did not directly advance the government's stated purpose.[48] Even as the commercial speech proponents were cheering the victory and predicting another win in *Florida Bar v. Went For It*,[49] the Court reversed field and upheld the Florida statute that imposed a 30-day waiting period on direct mail solicitations of accident and disaster victims by attorneys on the grounds that alternative avenues of communication were available.

If there is any lesson in the annals of commercial speech jurisprudence, it is that history offers precious little guidance. It appeared, for example, that *Coors* had set the stage for *44 Liquormart*, except that two months after the Court ruled unanimously to overturn the regulation in *Coors*, it upheld limitations on lawyer advertising in *Florida Bar*. Still, there is reason for optimism, as will be explained in Part II, which analyzes the many parts of the *44 Liquormart* decision.

Part II

The multiple parts and multiple concurrences in 44 Liquormart make it more than complex. It is downright labyrinthine. Still, the time involved in picking it apart to see if, and how, it advances commercial speech doctrine is well spent. The authors contend that the decision offers more promise than ever before that the Court is moving towards a policy decision that will overturn *Central Hudson* and replace it with a doctrine patterned after *Virginia Pharmacy*. This would move the Court away from "legislative judgment," "common sense" and a "reasonable fit" between social goals and legislative restrictions. The authors recognize, however, that this prediction is made in the face of proposed new regulations on tobacco that would do much to return advertising regulation to the now-discredited *Posadas* era.[50]

Concern might be raised over the Court's refusal to accept the second Anheuser-Busch appeal, allowing the city of Baltimore to restrict outdoor advertising for beer and tobacco advertising. However, in its second opinion, the Fourth Circuit also distanced its decision from reliance on *Posadas* and noted that no significant portion of the *44 Liquormart* decision received a majority of the justices' votes.[51]

44 Liquormart is a plurality decision. Although four of the eight parts of the majority decision each commanded five or more votes, none of them dealt with the heart of the issue. For example, Parts I and II, each of which drew six votes, simply recited the facts and history of the case.[52] Part VII reaffirmed the holding from *Coors* that the 21st Amendment, which ended Prohibition and turned over to the states the right to control alcohol, did not give states any additional authority to regulate commercial speech. Part VIII was simply the holding, reversing the Court of Appeals and finding, in accord with the District Court, that the statute was unconstitutional.[53]

The meat of Stevens' opinion, examined in detail below, came in Parts III, IV, V and VI. Parts III, V and VI each got four votes. For his strongest language, in Part IV, Stevens was able to persuade only two others to join him: Justices Anthony Kennedy and Ruth Bader Ginsburg. To understand this analysis, it is necessary to have a reference point for the various parts of the decision and where the justices lined up:

Main Opinion

I	II	III	IV	V	VI	VII	VIII
Stevens	Stevens	Stevens	Stevens	Stevens	Stevens	Stevens	Stevens
Scalia	Scalia	Kennedy	Kennedy	Kennedy	Kennedy	Scalia	Scalia
Kennedy	Kennedy	Souter	Ginsburg	Souter	Thomas	Kennedy	Kennedy
Souter	Souter	Ginsburg		Ginsburg	Ginsburg	Souter	Souter
Thomas	Thomas					Thomas	Ginsburg
Ginsburg	Ginsburg					Ginsburg	

Concur: Justice Clarence Thomas

Concur: Justice Antonin Scalia

Concur: Justice Sandra Day O'Connor, joined by Chief Justice William Rehnquist, Justice Stephen Breyer and Justice David Souter

There can be no question but that the impact of Stevens' argument is softened substantially by the distribution of the votes. The Fourth Circuit majority opinion, reconsidering *Anheuser-Busch v. Schmoke* on remand, cited that fact as its reason for dismissing the impact of the *44 Liquormart* decision.[54] The appeals court reiterated its support for Baltimore's ban on billboard advertising of tobacco and alcohol products, even though such an attempt at controlling conduct through controlling speech was clearly disfavored in *44 Liquormart.* In addition, Baltimore's restrictions are not all-inclusive; beer and tobacco products still may be advertised in selected areas of the city and in specified venues, while in Rhode Island, the ban on off-premise price advertising of alcoholic beverages was all-encompassing.

44 Liquormart began simply enough, with a discount liquor retailer challenging the Rhode Island statute that forbid off-premises advertising of liquor prices.[55] A second statute banned all broadcast and print advertising of liquor

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prices.[56] An earlier version of the laws had been challenged unsuccessfully in state court in 1985.[57] Part I of Stevens' opinion briefly recounted the origin of the statute and its litigation history.[58] Part II detailed the case's procedural history, starting with the District Court's determination that the statute was unconstitutional because it failed the third and fourth parts of *Central Hudson*.[59] Stevens noted that the First Circuit had reversed, finding merit in the state's contention that banning price advertising would lower consumption, even though the trial judge specifically held that the evidence on that point was equivocal. He also recounted the appeals court's reliance on the 21st Amendment and on the Court's own summary rejection of a challenge to a liquor price advertising ban in *Queensgate Investment Co. v. Liquor Control Comm'n of Ohio*.[60] This section of the opinion concluded with the announcement that it was time to revisit *Queensgate*.[61]

In the next four parts of the opinion, Stevens' support thinned. Not surprisingly, these four parts represent the heart of his rationale for curbing the government's right to regulate commercial speech for any reason other than to restrain false or misleading ads or to require disclosure of beneficial information for consumers. It is in these sections that Stevens questioned *Central Hudson*,[62] distinguished *Florida Bar*[63] and *Edge*[64] and repudiated *Posadas*.[65] (It is worth noting here that none of the five justices who formed the majority in *Central Hudson* is still on the Court. The only ones left who participated in the decision are Stevens, who concurred in a separate decision, and Rehnquist, who dissented.[66])

The rationale for a much-curtailed regulatory scheme started in Part III, where Stevens quoted liberally from *Virginia Pharmacy* and noted the perils of regulations that attempted to limit the "substance of the information communicated rather than the commercial aspect of [it]."[67] Stevens also quoted from Tribe's *American Constitutional Law* that: "The entire commercial speech doctrine, after all, represents an accommodation between the right to speak and hear expression about goods and services and the right of the government to regulate the sales of such goods and services."68 Stevens also launched his diatribe against government paternalism, a theme repeated throughout this portion of the opinion that also called for a return to the era when such bans on truthful, nonmisleading commercial speech had been rejected by the Court. He quoted extensively from the anti-paternalism portion of *Virginia Pharmacy*[69] and listed four other cases that followed similar rationales in overturning "complete" bans on certain types of commercial speech.[70] This part of the opinion concluded with a quote from *Central Hudson* about requiring "special care" when reviewing such bans on commercial speech.[71]

In Part IV, Stevens set up his argument for granting commercial speech nearly as much protection as political speech. He outlined a two-tiered review system, adopting something akin to the "rational basis" standard used for regulating false or misleading ads that did not implicate constitutional issues.[72] But for the type of ban found in the instant case, he argued for a much higher standard:

> [W]hen a State entirely prohibits the dissemination of entirely truthful, nonmisleading commercial messages for reasons unrelated to the preservation of a fair bargaining process, there is far less reason to depart from the rigorous review that the First Amendment generally demands.[73]

Stevens also challenged the concept that because commercial speech was "objectively verifiable" or more "durable," regulations that completely suppressed it were entitled to more deference from the Court.[74]

The call for a *Virginia Pharmacy*-type standard of review was clear. Unfortunately, it was also the part of the opinion with the thinnest direct support. But Stevens could take some comfort from two of the concurrences. For example, it is clear from Thomas' concurrence that he supported the concept, although he didn't join that part of the opinion. He preferred to abandon the Central *Hudson* test "when, as here, the asserted interest is one that is to be achieved through keeping would-be recipients in the dark."[75] For that matter, Scalia, in his brief concurring opinion, also appeared sympathetic:

> I also share Justice Stevens' aversion towards paternalistic governmental policies that prevent men and women from hearing facts that might not be good for them.[76]

He also appeared less than enthusiastic about *Central Hudson*'s continued worth. But he stopped short of making a frontal assault on the 17-year-old decision:

> I share Justice Thomas' discomfort with the Central Hudson test, which seems to me to have nothing more than policy intuition to support it....[I] do not believe we have before us the wherewithal to declare Central Hudson wrong -- or at least the wherewithal to say what ought to replace it -- I must resolve this case in accord with our existing jurisprudence, which all except Justice Thomas agree would prohibit the challenged regulation. I am not disposed to develop new law, or reinforce old, on this issue, and, accordingly I merely concur in the judgment of the Court.[77]

In Part V, Stevens attempted to reduce reliance on "common sense" and require, instead, solid evidentiary support for the position that a speech ban would advance the state's interest "to a material degree" or "significantly" impact the targeted behavior.[78] (Emphasis on such terms apparently had no impact on defendant/respondent Baltimore in the Anheuser-Busch case, because the Court refused to take it. The city's ban on billboard advertising contains 10 exceptions for various types of displays and media, along with general exceptions for areas zoned commercial or industrial.[79] In light of the *Coors* decision, one could argue that so many exceptions water down the ban to the point where it does not "significantly" advance the city's interest and "significantly" reduce consumption by under-age drinkers. However, based on *Florida Bar*, one could argue that those other avenues through which the message could be communicated make the Baltimore regulations less than a complete ban on the speech in question.)

Stevens made it clear in Part V that the Court (or, at least, four members of the Court) would require more than "speculation or conjecture" ... "when the State takes aim at accurate commercial information for paternalistic ends."[80] The authors believe that this concern would become moot if the Court adopted a *Virginia Pharmacy*-approach to regulation. Then it would be irrelevant whether such speech-suppressing regulations did what they were purported to do.

In Part VI, Stevens again drew three additional votes. Here, he disposed of the three main points of Rhode Island's defense, along with much of the earlier rationale for upholding such regulations in cases such as *Posadas, Edge* and *Fox.* First, he challenged the concept of judicial reliance on legislative judgment in commercial speech regulation, the bulwark of the state's case, grounded in *Posadas.* He granted that *Posadas* was more relevant than *Edge* (where the Court had deferred to Congress)[81] and that it did support Rhode Island's position on the question of legislative deference. The problem, Stevens said, was that *Posadas* was wrong. Not only was *Posadas* out of step with precedent, Stevens wrote, "in keeping with our prior holdings, we conclude that a state legislature does not have the broad discretion to suppress truthful, nonmisleading information for paternalistic purposes that the *Posadas* majority was willing to tolerate."[82] Second and just as wrong, he said, was the idea that the power to suppress an activity included the "lesser" power to suppress speech about the activity. "[W]e think it quite clear that banning speech may sometimes prove more intrusive than banning conduct," Stevens wrote.[83] Finally, Stevens dismissed the argument that regulation of speech about a "vice" such as alcohol merited more consideration, despite some dicta in *Edge* that characterized gambling as a "vice."

> Almost any product that poses some threat to public health or public morals might reasonably be characterized by a state legislature as a vice activity. Such characterization, however, is anomalous when applied to products such as alcoholic beverages, lottery tickets or playing cards, that may lawfully be purchased on the open market. The recognition of such an exception would also have the unfortunate consequence of either allowing state legislatures to justify censorship by the simple expedient of placing the "vice" label on selected lawful activities, or requiring the federal courts to establish a federal common law of vice. [citation omitted] For these reasons, a "vice" label that is unaccompanied by a corresponding prohibition against the commercial behavior at issue fails to provide a principled justification for the regulation of commercial speech about that activity.[84]

In Part VII, where Stevens' opinion once again commanded a majority, he made it crystal clear that the 21st Amendment held no sway over the 1st. The First Circuit, in supporting Rhode Island's ban, had relied upon the decision in *California v. LaRue*[85] in finding that the 21st Amendment gave the state's prohibition more force because it dealt with alcohol. That was a mistake, Stevens wrote, based on a misreading of both *LaRue* and the 21st Amendment.

> [W]e now hold that the Twenty-first Amendment does not qualify the constitutional prohibition against laws abridging the freedom of speech embodied in the First Amendment. [86]

In Part VIII, Stevens announced the opinion of the Court, that the challenged Rhode Island statutes violated the First Amendment. Thomas, who had joined more detailed parts earlier in the opinion, declined to join this section, even though his concurrence made it clear that he agreed with the outcome.

Scalia was restrained in his concurrence, willing to bow to the will of the people, if only he could figure out how they had felt about advertising and political speech before the Court created the separate category of commercial speech.[87] Scalia grudgingly noted that one of the *amicus* briefs had made a stab at exploring the views held on advertising when the 1st Amendment was adopted. "[T]hey are consistent with First Amendment protection for commercial speech, but certainly not dispositive," he sniffed.[88] He wrote that he would be more willing to settle for evidence of " ... any national consensus that had formed regarding state regulation of advertising after the 14th Amendment, and before this Court's entry into the field,"[89] a window of some 70 years.

Thomas found that same brief more compelling.[90] While he did not urge that all distinctions between the two forms of speech be dropped, he urged rejection of any commercial speech regulation designed "to keep information from legal purchasers so as to thwart what would otherwise be their choices in the marketplace."[91]

Thomas also characterized Justice Sandra Day O'Connor's concurrence as calling for a much stricter standard in applying Part Four of the *Central Hudson* test.[92] In fact, he conjectured that O'Connor's approach meant that in every case regulation of a legal product would be at least as effective in dampening demand as would restricting speech about the product, and that would have been preferable.[93]

For her part, O'Connor conducted what appeared to be a traditional *Central-Hudson*-type analysis. The parties had stipulated to Parts One and Two and, for the sake of her analysis, O'Connor was willing to assume that the regulation passed Part Three.[94] That brought her to Part Four, where she announced, in the very best ad hoc analytical fashion, that the fit between the challenged commercial speech restriction and the goal of reduced consumption was "not reasonable," because there were alternative methods that didn't require limits on speech.[95] She followed up by rejecting Rhode Island's appeal to follow *Posadas*, announcing that since *Posadas*, the Court had taken a "closer look" at the "relationship between the asserted goal and the speech restriction used to reach that goal."[96] Having created a new standard by which to judge whether a "fit" was "reasonable," O'Connor gave the Rhode Island statutes a "closer look" and found them wanting.

Despite Thomas' optimism, there appears to be little in O'Connor's concurrence to warrant his prediction that few, if any, advertising regulations in the future would survive her revised Part Four. While she did suggest that the availability of non-speech alternatives might jeopardize a commercial speech regulation, it was not nearly as categorical as Thomas contended. For example, O'Connor prefaced that portion of her analysis regarding the non-speech alternatives with the comment that Rhode Island had offered "one, and only one" justification for its ban on price advertising.[97] More than one reason for a similar ban might tilt O'Connor the other way. She also noted that the ban did not leave alternative advertising routes open (the rationale O'Connor used in upholding the limited solicitation ban in Florida Bar).[98]

PART III

While 44 *Liquormart* has been criticized for sending mixed signals[99] as to the Court's intentions on commercial speech, it is nonetheless a victory for the proposition that commercial speech merits more protection under the Constitution, not less. The problem lies with the continued use of the *Central Hudson* test to determine the amount of protection. The four parts are really two halves used independently, and they do not provide the guidance that the test purports to give.

For example, the first part, whether the advertising is false, misleading or for an illegal product, is self-executing. Advertising that falls into this category goes no further in the test. It is treated the same as if it were obscene and not entitled to any 1st Amendment protection. The second part of the test – whether the government interest asserted is substantial – has become a tautology. There has been no commercial speech case to reach the Court where the government interest has not been found substantial. Hence, the test has become just an ad hoc examination of whether the challenged regulation furthers that government interest and whether it does so narrowly. The problem is a complete lack of predictability.

Whether a regulation "directly advances" the state's interest has depended variously on whether the state has any concrete evidence to support its claim (as was tested through an evidentiary hearing in 44 *Liquormart*) or whether the Court should simply accept the regulating body's "commonsense" conclusion that it does.[100] Perhaps it is enough for the trial court to accept the regulatory body's assertion that such evidence exists, without conducting its own examination, as happened in the original *Anheuser-Busch* case, upheld on appeal,[101] reaffirmed by the Fourth Circuit following remand[102] and allowed to stand by the Court. Whether a regulation "directly advances" a state's interest apparently also depends on whether there is a "complete" ban on some aspect of the advertising, or there are alternative means of distributing the message.[103] In 44 *Liquormart,* Justice Stevens found the regulation to be a total ban, even though the regulation dealt only with price advertising, not all liquor advertising. In *Florida Bar,* the majority found that the ban on lawyer solicitation was not a complete ban on speech because the regulation left other avenues of communication open.

But even something short of a complete ban has proved troublesome under the *Central Hudson* approach when the Court finds that exceptions dilute the regulator's ability to "materially advance" the state's interest. In *Coors,* the Court struck down a federal beer labeling requirement because it was riddled with exceptions. However, in *GNOBA,* the Fifth Circuit confronted a similar issue and had little trouble upholding a federal regulation banning broadcast advertising of casino gambling.[104] Further, the appeals court panel decried the language in *Coors* criticizing the "greater includes the lesser" rationale of *Posadas.* The panel dismissed the broadcasters' contention that the numerous exceptions to the casino advertising ban rendered it as ineffective as the beer labeling ban. The decision was appealed, and the Court vacated the ruling, remanding it for further consideration in light of 44 *Liquormart*,[105] which had even harsher words for *Posadas*.[106] Faced with the same set of facts as in GNOBA, but post-44 *Liquormart*, the Ninth Circuit came to the opposite conclusion.[107] In that case, involving a challenge to the casino advertising ban by two Nevada television stations, the Ninth Circuit found that the regulations could not withstand the onslaught of both *Coors* and 44 *Liquormart*.[108]

The Fourth Circuit had the same opportunity in its Baltimore billboard case to re-examine in light of 44 *Liquormart* and chose to stick with its original finding.[109] The Supreme Court also passed on the opportunity to clarify and strengthen 44 *Liquormart* by refusing to review the Fourth Circuit's decision. As is the norm, the Court did not offer an explanation for its denial of certiorari, leaving in its wake the problem of trying to apply the Court's dictates under *Central Hudson*. Is the billboard ban a "complete" suppression of truthful speech? If so, it would seem to fall within the logic of 44 *Liquormart* and, therefore, be unconstitutional. However, other forms of alcohol advertising are permitted, including billboards carrying alcoholic beverage advertising in certain parts of the city. Thus, under *Florida Bar*, the regulation should be sustained, because there are alternative avenues of communication left open. But, are there too many exceptions? Apparently, the Court didn't think so, or not enough justices thought so to grant certiorari. The statute not only permits alcoholic beverage billboards in commercial and industrial areas, but also allows signs on vehicles and in sports stadiums where the products are sold.[110]

An issue currently developing will provide the Court with yet another challenge to its commercial speech doctrine that could prove the most difficult yet.

The U.S. Food and Drug Administration (FDA), at the command of President Clinton, has propounded a lengthy set of rules governing the sale and advertising of tobacco products.[111] The advertising regulation component alone consumes 72 pages in the *Federal Register.* Numerous limits are imposed on tobacco advertising, including restricting the type of ads that may be placed in certain media and the banning of product names in others (although company names would be allowed – the Winston Cup race would be replaced by the R.J. Reynolds Cup, for example). The regulations are already in court.[112] The government has provided a detailed rationale for how the regulations meet the Court's commercial speech standards, even though the proposal is for the suppression of truthful, nonmisleading speech about a lawful product.[113] Included in its argument is the contention that its "commonsense judgment" that the advertising regulations will directly advance its interest in reducing smoking among juveniles is entitled to "some deference" by the Court.[114]

Perhaps the issue will turn on whether the district court now examining the regulations will conduct its own evidentiary hearings or simply acknowledge the existence of the FDA's extensive effort. Or maybe the outcome will depend on the number of exceptions allowed or whether the regulations are seen as a "complete" ban, or a limited ban that allows alternative avenues of communications. As one commentator has noted, having to sort through so many gradations serves as a means of keeping commercial speech "ghettoized as subordinate speech...."[115] The law should not be dependent on so many variables where free speech is involved, even if it is "just" commercial speech.

The solution seems clear: Bid *Central Hudson* farewell and embrace *Virginia*

Pharmacy as the controlling precedent for advertising regulation. Regardless of whether it peddles a congressional candidate or a can of Coors, speech should be unfettered unless the government can demonstrate a compelling interest to curb it. Neither the rational basis, nor even the "special care" standards now employed by Central Hudson for judging truthful, nonmisleading commercial speech will suffice.

ENDNOTES

1. 116 S. Ct. 1495 (1996).

2. Thomas D. Blue, Jr., Constitutional Law: *The Fourth Circuit's Commercial Speech Analysis in* Penn Advertising *and* Anheuser-Busch. 74 N.C.L. Rev. 2086 (1996) at 2088.

3. 447 U.S. 557 (1980).

4. 425 U.S. 748 (1976).

5. 116 S. Ct. 1495 (1996) at 1505.

6. *Id.* at 1516.

7. Greater New Orleans Broadcasting Association (GNOBA) v. U.S and the Federal Communications Commission, 69 F.3d 1296 (5th Cir. 1995) *rehearing denied* 78 F.3d 583 (1996) *remanded* 117 S. Ct. 39 (1996); Anheuser-Busch, Inc. v. Schmoke, 63 F.3d 1305 (4th Cir. 1995) *remanded* 116 S. Ct. 1821 (1996); Penn Advertising of Baltimore v. Baltimore, 63 F.3d 1318 (4th Cir. 1995) *remanded* 116 S. Ct. 2575 (1996).

8. Anheuser-Busch, Inc. v. Schmoke and Penn Advertising of Baltimore v. Baltimore, 101 F.3d 325 (4th Cir. 1996).

9. 117 S. Ct. 1569 65 U.S.L.W. 3727 (1997)

10. 69 F.3d 1296.

11. U.S. v. Edge Broadcasting, 125 L. Ed. 2d 345,356 (1993).

12. 117 S. Ct. 39 (1996).

13. Arthur D. Hellman, *The Supreme Court's Second Thought: Remands for Reconsideration and Denials of Review in Cases Held for Plenary Decisions,* 11 Hastings Const. Law Qtrly 5 (1993-4). " ... some of the reconsideration orders may be tantamount to reversals, but it cannot be assumed that all of these are." at 9. Hellman cites Henry v. City of Rock Hill, 376 U.S. 776 (1964) (per curiam) where the Court had remanded an opinion, upon cert. reaffirmed, and South Carolina, upon further review, summarily reversed in language. Hellman said that "casts serious

doubt on any idea that a remand for reconsideration 'in light of' an intervening precedent is no more than a neutral suggestion that the court below study the cited decision for whatever illumination it may shed on the correctness of its initial judgment." at 10.

14. Blue, 74 N.C.L. Rev. 2086 (Sept. 1996) at 2088 and *Freedom of Speech, Press, and Association*, 110 Harv. L. Rev. 216 at 218, calling the opinion "fractured."

15. United States v. Edge Broadcasting 125 L. Ed. 2d 345 (1993), City of Cincinnati v. Discovery Network 507 U.S. 410 (1993), Edenfield v. Fane 507 U.S. 761 (1993), Ibanez v. Florida Department of Business and Professional Regulation 114 S. Ct. 2084 (1994) 512 U.S., Florida Bar v. Went for It, Inc. 115 S. Ct. 2371 (1995), Rubin v. Coors 115 S. Ct. 1585 (1995).

16. U. S. v. Edge 125 L. Ed. 2d 345 (1993) (*Stevens, J. dissenting*); Florida Bar 115 S. Ct. at 2381, (*Kennedy, J. dissenting, joined by Stevens, Souter, and Ginsburg*); Posadas de Puerto Rico v. Tourism Co. 478 U.S. 328, (*Stevens, J., dissenting*) at 359.

17. Bigelow v. Virginia 421 U.S. 809 (1975), (*Rehnquist, J., dissenting, joined by White*); Virginia Pharmacy Board v. Virginia Citizens Consumer Council, Inc., 425 U.S. 478 (1976) (*Rehnquist, J., dissenting*); Posadas 478 U.S. 328 (*Rehnquist delivered the opinion of the Court*).

18. Robert L. Stern et. al., Supreme Court Practice 6 (6th ed. 1986).

19. Valentine v. Chrestensen 316 U.S. 52 (1942).

20. 421 U.S. 809 (1975).

21. *Id.* at 820.

22. *See* Bigelow, 421 U.S. at 822.

23. It is interesting to note, in light of the current remands following 44 Liquormart, that Bigelow was a case decided after a lower court declined the Supreme Court's invitation to rethink its decision on remand. In Bigelow, the Supreme Court had sent the case back to the Virginia Supreme Court for reconsideration in light of Roe v. Wade, 410 U.S. 113. The state high court reaffirmed its earlier decision. The Supreme Court took the case again, and this time reversed, in what has since become a major holding in commercial speech litigation. *Id.* at 809. The authors believe that the two cases now on remand, one already decided and one pending, should heed the lesson of Bigelow.

24. *Id.* at 831.

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25. 425 U.S. 478, 763 (1976).

26. Rehnquist's impassioned dissent forecast several current advertising practices that, at the time, he used as exaggerated examples of potential future evils that might result from the majority viewpoint. "Under the Court's opinion the way will be open not only for dissemination of price information but for active promotion of prescription drugs, liquor, cigarettes, and other products the use of which it has previously been thought desirable to discourage. *Now, however, such promotion is protected by the First Amendment so long as it does not promote an illegal product or enterprise."* (emphasis added) .... Both Congress and state legislatures have by law sharply limited the permissible dissemination of information about some commodities because of the potential harm resulting from those commodities, even though they were not thought to be sufficiently demonstrably harmful to warrant outright prohibition of their sale. Current prohibitions on television advertising of liquor and cigarettes are prominent in this category, but apparently under the Court's holding so long as the advertisements are not deceptive they may no longer be prohibited." *Id.* at 781, 789.

27. 431 U.S. 678 (1977).

28. 433 U.S. 350 (1997).

29. 447 U.S. 557 (1980)

30. *Id.* at 566.

31. n. 9 *Id.* at 566.

32. 44 Liquormart brief at 4,5; Rhode Island brief at 18, 19.

33. "Commercial Speech After Posadas and Fox: A Rational Basis Wolf in Intermediate Sheep's Clothing" 66 Tulane L.R. 1931 (1992) at 1941.

34. 478 U.S. 328 (1986).

35. 453 U.S. 490 (1981).

36. 66 Tulane L.R. *supra* at 1943.

37. 463 U.S. 60 (1983).

38. A LEXIS search of Posadas in a law review database produced more than 50 citations.

39. *See* Posadas, 478 U.S. at 342.

40. 425 U.S. 748, 773 (1976).

41. 447 U.S. 557, 566 (1976).

42. 492 U.S. 469 (1989).

43. *Id.* at 480.

44. 507 U.S. 761 (1993)

45. City of Cincinnati v. Discovery Network, 507 U.S. 410 (1993).

46. United States v. Edge Broadcasting, L. Ed. 2d 345 (1993).

47. Ibanez v. Florida Department of Business and Professional Regulation 512 U.S. 114 S. Ct. 2984.

48. 115 S. Ct. 1585 (1995).

49. 115 S. Ct. 2371 (1995).

50. 61 Fed Reg 44396 (1996) (to be codified at 21 C.F.R. pts. 801, 803, 804, 807, 820, and 897).

51. 101 F.3d 325 (4th Cir. 1996)

52. 116 S. Ct at 1495, 1501 (1996).

53. *See* 44 Liquormart, 116 S. Ct. at 1515.

54. 101 F. 3d 325, 328 (4th Cir. 1996).

55. R.I.G.L. Section 3-8-7 (1987).

56. R.I.G.L. Section 3-8-8.1 (1987).

57. S&S Liquor Mart, Inc. v. Pastore, 497 A. 2d 729 (R.I. 1985) and Rhode Island Liquor Stores Assn. v. Evening Call Pub. Co., 497 A. 2d 331 (R.I. 1985).

58. 116 S. Ct. 1495, 1501 (1996).

59. *Id.* at 1502

60. 69 Ohio St. 2d 361, 433 N.E. 2d 138 (1982).

61. *See* 44 Liquormart, 116 S. Ct. at 1504.

62. *Id.* at 1507, Fn 10.

63. *Id.* at 1507.

64. *Id.* at 1511.

65. *Id.*

66. Central Hudson 447 U.S. 557, 583 (1980).

67. *See* 44 Liquormart, 116 S. Ct. at 1506, quoting Linmark Associates, Inc. v. Willingboro, 431 U.S. 85, 96 (1977).

68. Laurence Tribe, American Constitutional Law Sec. 12-15, at 903 (2d. ed. 1988).

69. 425 U.S. 748, 770 (9176).

70. *See* 447 116 S. Ct. at n. 8.

71. *Id.* at 1507.

72. *Id.*

73. *Id.*

74. *Id.* at 1508.

75. *Id.* at 1518.

76. *Id.* at 1515.

77. *Id.*

78. *Id.* at 1509.

79. 63 F.3d 1305, 1308 (4th Cir. 1995).

80. *See* 44 Liquormart, 116 S. Ct. at 1510.

81. United States v. Edge Broadcasting, 125 L. Ed. 2d 345 (1993).

82. 116 S. Ct. at 1511

83. *Id.* at 1512.

84. *Id.* at 1513.

85. 409 U.S. 109 (1972)
86. *See* 44 Liquormart, 116 S. Ct. at 1515.

87. *Id.*

88. *Id.*

89. The 14th Amendment extended the provisions of the Bill of Rights to the states. Scalia would look to "state legislative practices" at that time (1868), "since it is most improbable that that adoption was meant to overturn any existing national consensus regarding free speech." *See* U.S. Constitution Amendment XIV. *Id.*

90. "I do not see a philosophical or historical basis for asserting that 'commercial' speech is of 'lower value' than 'noncommercial' speech. Indeed, some historical materials suggest to the contrary. ... (... that commercial activity and advertising were integral to life in colonial America and that Framers' political philosophy equated liberty and property and did not distinguish between commercial and noncommercial messages.)" *Id.* at 1518 citing brief for American Advertising Federation 12-24).

91. *Id.*

92. *Id.*

93. *Id.* at 1519.

94. *Id.* at 1521.

95. *Id.*

96. *Id.* at 1522.

97. *Id.* at 1521

98. 115 S. Ct. 2371, 2380-81

99. *See* Anheuser-Busch v. Schmoke, 101 F. 3d 325 (1996); Valley Broadcasting v. U.S., 1997 U.S. App. LEXIS 3291 (9th Cir. Feb. 25, 1997); Harv. L.R. see generally 216 (1996).

100. Ohralik v. Ohio State Bar Assn., 436 U.S. 437, 455-456 (1978); and Bates v. State Bar of Arizona, 433 U.S. 350, 381 (1977).

101. 63 F.3d. 1305 (4th Cir. 1995).

102. 101 F.3d. 325 (4th Cir. 1996).

103. 116 S. Ct. 1495, 1507 (1996); 115 S. Ct. 2371, 2380-81.

104. GNOBA 69 F.3d. 1296 (5th Cir. 1995).

105. 117 S. Ct. 39 (1996).

106. 478 U.S. 328 (1986).

107. Valley Broadcasting v. U.S., 1997 U.S. App. LEXIS 3291 (9th Cir. Feb. 25, 1997).

108. *Id.* at 24.

109. 101 F.3d. 325, 327 (1996).

110. *Id.* at 329.

111. 61 Fed Reg 44396 (1996) (to be codified at 21 C.F.R. pts. 801, 803, 804, 807, 820, and 897).

112. Scott Higham, *Suits May Stall Smoking Fights for Years,* Baltimore Sun Aug. 11, 1995 at A1.

113. *See* 61 Fed. Reg. at 44469-538.

114. *Id.* at 44474.

115. 110 Harv. L.Rev. 216, 226 (1996).

Sociocultural Influences on Advertising Seen From Gender-Role Portrayals: A Content Analysis of Chinese and U.S. Television Commercials From 1996

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ABSTRACT

Seeing advertising as a social actor and cultural artifact, this paper content analyzed gender roles portrayed in a total of 667 Chinese and U.S. television commercials from 1996. Results show that advertising in both countries portrayed more men in occupational roles and more women in non-occupational ones, and depicted men in recreational activities more frequently and women decoratively more often. Chinese advertising was found reinforcing even more stereotypes than its U.S. counterpart. Other major differences included the styles of dresses worn by female models and the number of models portrayed. Gender-role portrayals were also found related to product categories advertised.

INTRODUCTION

Advertising is not only a marketing tool but also a social actor and a cultural artifact (Dyer, 1982; Frith, 1995; Leiss, Kline and Jhally, 1990). As a social actor, advertising stages "a powerful social drama" that transforms symbols and ideas, and bonds together images of persons and products (Leiss, Kline and Jhally, 1990). As a cultural artifact, advertising serves more as a "distorted mirror" for "deeper cultural tendencies," reflecting only certain attitudes, behaviors and values, and reinforcing only certain lifestyles and philosophies that help sell commodities (Pollay, 1986; Pollay and Gallagher, 1990).

One of the most perplexing and complex issues that has been challenging this social actor and cultural artifact is how to portray men and women in advertising (Whipple and Courtney, 1985) because gender roles are one of the most important indicators for codified behavior in all societies. As Leiss, Kline and Jhally (1990) noted,

> [E]very culture has accepted 'routine' forms for communicating gender identity. A culture's social norms indicate how men and women are supposed to look, act, and relate to each other in a wide variety of social situations; the resultant ritualized behavior 'anchors' expectations, rewards, and punishments and stabilizes social intercourse (p. 215).

Social scientific studies have indicated that gender-role portrayal in advertising, as an agent of socialization, exerts considerable influence on the thought patterns of society (Dyer, 1982; Bardhan, 1995). As a central issue in advertising, gender-role portrayal is also found directly affect the effectiveness of advertising campaigns, particularly those targeted toward women. There is empirical evidence that women are more aware than men of stereotyped gender-role portrayals in advertising (Lull, Hanson and Marx, 1977; Lysonski and Pollay, 1990; Whipple and Courtney, 1985).

As gender has become an important cultural identity in today's global village (Collier, 1997), a "cultural lag" may exist between advertising's gender-role portrayals in different societies (Cooper-Chen, 1995; O'Toole, 1982). This study is designed to examine such a "cultural lag," if any, between advertising in China and in the United States. More specifically, it is an initial endeavor to investigate how sociocultural contexts influence advertising's gender-role portrayals in these two countries.

SIGNIFICANCE OF THIS STUDY

As shown in the literature reviewed below, numerous studies have been done on advertising's portrayals of women in the United States, and some have been done cross-culturally. But no systematic study has ever been done on gender-role portrayals in Chinese advertising, of which business volume has been growing at an average rate of about 40 percent between 1981 and 1995 (Advertising Reference Materials, 1996b), one of the fastest in the world. Calling such a rapid growth a "marketing revolution," Parsons (1993) pointed out, "China's advertising industry is witnessing its fastest growth ever" (p. 18). So, a careful study of the gender roles portrayed in Chinese advertising is called for in the sense that it can enrich our knowledge of this sociocultural artifact because an examination of how men and women are depicted in Chinese advertisements may deepen our understanding of how advertising in China is socially and culturally influenced. In the meantime, the findings from such a study may have practical implications for advertising professionals, Chinese and foreign alike, who target toward this market.

The reason for focusing on television commercials in this study is that television is the fastest-growing advertising medium in China. In 1995, its business volume (6.498 billion yuan) for the second time in Chinese history surpassed that of newspaper (6.468 billion yuan), turning television into number one advertising medium in the country (Advertising Reference Materials, 1996a). As documented in a recent study, television advertising has become a particularly effective marketing tool and a formidable force in the Chinese marketplace (Zhao and Shen, 1995).

In addition to the fact of being "the advertising capital of the world" (Baudot, 1989), the United States is selected for comparison in this study because of several other considerations. First, from the incomplete literature reviewed below it is evident that bulk of previous studies on gender-role portrayals in advertising was focused on advertising in the United States. This rich research heritage provides a significant "reference frame" for examining Chinese advertising.

Next, China and the United States provide advertising with different social contexts. As Cheng and Schweitzer (1996) observed, for example, most advertisements in China still need governmental sanctions. So, a comparative investigation of advertising in a major socialist country and a leading capitalist one in the world will undoubtedly make this study more meaningful. It is also hoped to find out in this study if ideology has any impact on gender-role portrayals in advertising, and if it has, to what extent this impact exerts.

Last but by no means least important, since China is regarded as typical of Eastern culture while the United States typical of Western culture (Porter and Samovar, 1997), it would be of great significance to determine how big, if any, the "cultural lag" is between advertising's gender-role portrayals in these two countries. In the meantime, since it has been documented in many recent studies that advertising in China is under the influence of its counterparts in the West, particularly in the United States (Anderson, 1984; Baudot, 1989; Cheng, 1994, 1996a; 1996b; Cheng and Frith, 1996; Cheng and Schweitzer, 1996; Ha, 1996; Mueller, 1996; Pollay, Tse and Wang, 1990; Rotzoll, 1986; Swanson, 1990, 1995, 1996; Zhao and Shen, 1995; Yu, 1991; Xu, 1989, 1990), it would be necessary to monitor the influence of Western culture on advertising in China today by using gender-role portrayals as an important sociocultural indicator.

BACKGROUND

Women's role and status in China

The People's Republic of China, with a total of 1.2 billion people currently, contains 20 percent of the world's population. In the early 1990s, more than 550 million women lived in China (Center, 1995a). In the traditional China that endured for several millennia women's status was "little better than a slave's" (Curtin, 1975, p. 10). As Li

(1988) noted, "Few societies in history have prescribed for women a more lowly status or treated them in a more routinely brutal way than traditional Confucian China" (p. 5). Discrimination against women was institutionalized within all the usual structures of society: family, the economy, education, culture and the political system (Pearson, 1995). Take the family for example, a woman in traditional China was shackled with feudal ethics called "the three obediences," namely, obedience to her father before marriage, to her husband after marriage, and to her sons after the death of her husband (Su, 1996).

The binding of women's feet, introduced throughout China in the tenth century and seen as a mark of gentility for centuries, was actually meant to restrain women when they went out of doors (Curtin, 1975). Women were deprived of the right of self-determination in love affairs and marriage, and over 95 percent of marriages were arranged on a monetary basis (Public Information, 1995d). A Chinese woman's traditional role in life was to bear male children to perpetuate the family name. If she did not fulfill this "task," she could be cast out of her husband's home, disgraced, and socially ostracized (Su, 1996).

In the wake of the Democratic Revolution of 1911, women's status in China began to improve (Li, 1988). Later, millions of women participated in the Chinese revolution, seeing in it the means for their emancipation. The decisive and fatal blow to the age-old forces that held Chinese women in subjugation, however, was the communist victory in 1949 (Curtin, 1975). The All-China Women's Federation was established that year to, among others things, help reduce household responsibilities for working women and to educate women with "correct" attitude toward marriage, family, and the elderly (Li, 1988). In 1950, the Marriage Law of the People's Republic of China was passed to ensure to people the full freedom of marriage (Curtin, 1975). A survey conducted by the China Central Television Survey and Consultation Center in 1995 reported that about 60 percent of urban husbands or wives chose their own spouses, whereas about 50 percent of rural couples did so (Yang, 1996). Other sample investigations showed that 80 percent of married women under forty years of age in China made their own choices (Public

Information, 1995d). Chinese women have gained the personal right for retaining their maiden names. In cities, some children take their mothers' surnames.

In those post-1949 revolution years, the Chinese government has been using the slogan that women in China "hold up half of the sky" as both an ideological guideline and a showcase for increasing women's social status. The most substantial improvement is that nearly all young women are employed outside the home (Li, 1988). According to 1995 statistics, women employees account for 291 million, or 44.96 percent of the total employees in China. They are found in almost every industry and trade (Public Information, 1995c). Women holding managerial positions have become noticeable in society. In the last few years, the Society for China's Women Entrepreneurs has been in contact with more than three thousand women factory directors and managers (Public Information, 1995e). The share of Chinese women's earnings in total family income rose from 20 percent in the 1950s to 40 percent in the mid-1990s (Public Information, 1995d). Women's economic independence has promoted their status in the family, giving them more management and decision-making power in principal family and economic matters.

Another major elevation of Chinese women's status is the increased opportunities for school education. Illiteracy rate for women dropped from 90 percent in 1949 to 32 percent in the mid-1990s. And 34.5 percent of students enrolled in institutes of higher learning in 1994 were women (Public Information, 1995b). As a result that more women have received formal education, the number of women professionals in science and technology surpassed eight million in mid-1990s, accounting for 35 percent of the total scientific and technological work force in the country (Public Information, 1995a).

Studies have also found, however, problems still exit in China regarding women's rights and status. It is noticeable that the rate of women in Chinese work force declined from 49.7 percent in 1987 (Encyclopaedia Britannica, 1997a) to 44.96 percent in 1995 (Public Information, 1995c). Pearson (1996) pointed out that a number of circumstances have combined in the reform era to put women at a more disadvantageous position now than at any other time since 1949. Some of them reflect age-old prejudices, others are the result of the economic reforms. For example, while the government's desire to control women's fertility has led to a marked improvement in maternity and childcare services, the one-child policy has skewed birth ratio in favor of boys. Similarly, Richards (1996) observed that China's one-child policy has been successful to a large extent but new problems in relations to it have occurred, citing female infanticide and abortion of female fetuses, the disproportion of male over female numbers, the rise of bachelor numbers, and the abduction of women. It is also found that the one-child policy was not quite effective for Chinese women registered as peasants and living under less government control. Multivariate analysis of the fertility behavior of these women reveals that son preference strongly affected the probability of having a second and third child, even more so than the level of education, the degree of urbanization, and population policy measures (Li, 1995).

In 1996, Schein and others examined how gender-role characteristics perceived as necessary for career success by management students in Japan and the PRC. They reported that males and females in both countries perceive that successful managers possess characteristics, attitudes and temperaments more commonly ascribed to men than to women. These results were compared with previous studies done in Britain, Germany and the United States. The comparison indicates that the "think manager-think male" view is a global phenomenon, especially among males. In another study of the relationships between work and family roles and psychological well-being, Lai (1995) found that women in urban China tend to experience more family demands than men. While men are more vulnerable to work stress than family stress, women's mental health is tied similarly to stress arising from both work and family roles.

In sum, it is obvious that Chinese women's social and economic status has improved significantly over the last few decades. But it is also apparent that the age-old gender bias against women still remains strong in the country, which has constituted a major barrier to women's full equality with men.

Women's role and status in the United States

In 1996, the population of the United States was estimated to be 265.3 million, including 135.5 million women (U.S. Bureau, 1997b). Some of the longest and most vicious battles regarding women in the United States in the past have been fought over issues that touched on the home and family: equal rights for women, access to birth control information, and legal abortion. Suffrage for women is considered a major accomplishment of women's movement. Women's ability to work for wages was, and perhaps still is, an issue (Kessler-Harris, 1982).

In 1870, only 18.2 percent of women were in the U.S. labor force. Over the next hundred years, however, women's participation in the labor force climbed steadily, increasing to 21.9 percent in 1930 and 32.1 percent in 1960, for example (Reskin and Padavic, 1994). In contrast, men's labor force participation fell slightly, "suggesting a long-term convergence in the participation rates for men and women" (Bloom, 1986, p. 143). During the 1960s, several federal laws improving the economic status of women were passed. The Equal Pay Act of 1963 required equal wages for men and women doing equal work. The Civil Rights Act of 1964 prohibited discrimination against women by any company with twenty-five or more employees. A Presidential Executive Order in 1967 prohibited bias against women in hiring by federal government contractors (Women's International Center, 1995). By 1992, 76 percent of men and 58 percent of women were in the labor force. In the same year, out of every one hundred persons in the U.S. labor force, forty-six were women (Reskin and Padavic, 1994). As Bloom (1986) put it, "The rise in the number of working women is probably the single most important change that has ever taken place in the American labor market" (p. 143).

Meanwhile, school education for women has remained widely available over the years. Women of twenty-five years old or over who completed four-year college, for example, took 42.9 percent, 39.3 percent and 46 percent of the total of four-year college graduates in 1950, 1970 and 1995 respectively (U.S. Bureau, 1997c).

Nevertheless, as Reskin and Padavic (1994) noted, "Dramatic changes in family structure and women's labor force participation have not brought substantial changes to the sexual division of labor" (p. 147). Most U.S. women still worked in the primarily female occupations in the early 1990s. Of the fifty-six million women in the labor force when the 1990 census was conducted, one-third worked in just ten of the 503 detailed occupations. Of these occupations, secretary toped the list, employing about one woman in ten. Other traditionally female lines of work that employed millions of U.S. women included retail sales (7.9 million), cashiering and bookkeeping (4 million), nursing (3.4 million), and school teaching (3.4 million) (*Ibid.*, 1994). While most married women share responsibility for the breadwinner role, men, by and large, have been slower to share domestic responsibilities. As a result, many U.S. women have largely shouldered "double duties" of work and family on their own (*Ibid.*, 1994).

In the meantime, gender discrimination in other fields still persist in the United States. As a report from the Women's International Center, a non-profit global network on the World Wide Web, described,

> Many retail stores would not issue independent credit cards to married women. Divorced or single women often found it difficult to obtain credit to purchase a house or a car. Laws concerned with welfare, crime, prostitution, and abortion also displayed a bias against women (Women's International Center, 1995, p. 3).

In short, it is certain that U.S. women have made rapid strides in the workplace over the years, and traditional roles for women are less endorsed nowadays. But their status is still not quite equal to that of men (Sengupta, 1995).

LITERATURE REVIEW

Content analysis, as a major research method for decades on gender roles depicted in advertising, has documented patterns in the portrayals of men and women (Cooper-Chen, 1995). Studies in this domain could make an article-length review in their own right. The following paragraphs, paving the way for this project, mainly review those focusing on cross-cultural studies of gender-role portrayals in advertising while briefly mentioning others.

The first serious study of gender roles in advertising was conducted by Courtney and Lockeretz (1971), who reported that U.S. advertisements portrayed women as only having a place in their homes, incapable of making important decisions, and fully depending on men. In the next twenty years or so, several follow-up studies (Wagner and Banos, 1973; Belkaoui and Balkaoui, 1976; Kerin, Lundstrom and Sciglimpaglia, 1979; Sullivan and O'Conner, 1988; Busby and Leighty, 1993; Lewis and Neville, 1995; Cornelius *et al*., 1996) were also largely devoted to women's working and family roles portrayed in U.S. magazine advertisements. Their conclusion is that stereotyping in the portrayal of women has continued into the mid-1990s although the percentage of women shown as professionals and managers has made modest gains since the late 1950s (Cornelius *et al*., 1996). Some researchers paid more attention to how women-as-sex-objects was used as an attention grabber in advertisements (Venkatesan and Losco, 1975; Eagle, 1979; Soley and Kurzbad, 1986; Ferguson, Kreshel and Tinkham, 1990). They found that the portrayal of women as sex objects decreased between the mid-1970s and mid-1980s but increased in more recent years. While most researchers mainly paid attention to women, some scholars focused on men's roles portrayed in U.S. magazine advertisements (Wolheter and Lammers, 1980; Skelly and Lundstrom, 1981; Kolbe and Albanese, 1996).

The first study of gender roles portrayed in television commercials was conducted by Dominick and Rauch (1972), followed by Schneider and Schneider (1979). In addition to supporting most of the findings generated from studies of gender-role portrayals in U.S. magazine advertisements, they reported that voice-overs in U.S. television commercials were dominated by males.

Some recent studies of gender-role portrayals in U.S. advertising were devoted to one type of advertising (Craig, 1992; Leppard, Ogletree and Wallen, 1993; Hansen and

Osborne, 1995). It is found that gender bias against women also exits, for example, in drug advertising. Other recent studies were focused on another selected country instead of the United States. Cooper-Chen (1995) presented that in Japanese advertising men did dominate the high-level business occupational category, whereas women were mainly portrayed as entertainers. She also found that non-working Japanese women were shown more often in decorative roles than in family settings. Bardhan (1995) reported that from the mid-1980s to mid-1990s Indian women were increasingly portrayed in more independent roles and as equals of men in the workplace. She also noticed, however, that Indian women were depicted as putting their domestic obligations before the demands of their careers.

In the late 1980s, advertising researchers' attention was extended to comparative studies of gender roles portrayed in different countries. Gilly (1988) initiated such a study by comparing television commercials from Australia, Mexico and the United States. She reported that women were likely to appear at home or outdoors and men were likely to be shown in occupational settings in U.S. commercials, but little gender difference in setting was found in Australian and Mexican commercials. Meanwhile, Gilly noted that male voice-overs were almost equally dominant in the commercials from all three countries. She also found that while women in Mexican commercials received help from men more often, women in U.S. commercials received advice from men more frequently.

Wiles and Tjernlund (1991) compared the role portrayals of men and women in magazine advertisements from the United States and Sweden. They suggested that men were more often shown in work roles in U.S. advertisements and in non-work roles in Swedish ones. In terms of working roles, Swedish advertisements tended to portray both men and women in more professional/high-level business roles, but U.S. advertisements were likely to show women in the semi-professional/mid-level business category. The most obvious difference, as Wiles and Tjernlund emphasized, went to the gender roles depicted in non-working activities--U.S. advertisements tended to show men and women in decorative roles, whereas Swedish advertisements were likely to portray them in recreational ones. They believed that the more frequent use of decorative roles in U.S. advertisements resulted from the criticism of other role choices, and suggested that Swedish advertisers were more comfortable portraying men and women in more diverse roles and in a more equitable manner. In addition, they found that Swedish advertisements tended to show men and women in family settings more often than their U.S. counterparts.

Comparing print advertisements from the United States and France, Biswas, Olsen and Carlet (1992) reported that sex appeals were used more often in French than in U.S. advertisements. They interpreted this finding as consistent with the perception that France is more sexually liberated than the United States, and hence more receptive to the use of sex in advertising.

In a first direct comparison of advertising's gender-role portrayals in a Western and an Eastern culture, Griffin, Viswanath and Schwartz (1994) presented that the conventionalized poses and stylized settings shown in Indian magazine advertisements with women were extremely similar to those found in U.S. ones. So, they contended that "Western advertising conventions are being transferred cross-culturally in conjunction with the transfer of institutions and technology" (p. 503). The major difference they found was that U.S. advertisements contained a higher frequency of occupational roles and sexual body displays while Indian advertisements had a stronger tendency to portray women performing duties in the home.

In a study of women portrayed in U.S. and Japanese advertising, Sengupta (1995) found several similarities shared by television commercials from the two countries. First, males were shown more often than females. Second, males were more likely to appear as high-level business executives and as blue-collar workers while women were more often depicted as mid-level business executives and nonprofessional white-collar workers. Third, while women were shown as frequently as men in family settings, they were more likely than men to appear in decorative roles. With regard to the differences, Sengupta reported that women appeared in working roles nearly twice as frequently in U.S. commercials as in Japanese ones, and that more U.S. women were shown in family roles while more Japanese women were shown in decorative ones. He attributed these differences to the perception that Japan is still more male-dominant than the United States. Unexpectedly, however, Sengupta found that female voice-overs were used more than twice as frequently in Japanese as in U.S. commercials. He maintained that this finding was consistent with the recent changes in marketing strategy in Japan, which targeted toward those young "office ladies" who often had more disposable incomes than most other customers.

RESEARCH QUESTIONS AND HYPOTHESES

Based on the literature on Chinese and U.S. women's status and roles in their respective countries, and the previous studies on gender-role portrayals in advertising, hypotheses were formulated for this cross-social and cross-cultural comparison of men and women depicted in Chinese and U.S. television commercials. The hypotheses were intended to help answer the first research question because it is more complicated than the second one.

Research Question I: What are the similarities and differences in gender-role portrayals between Chinese and U.S. television commercials regardless of product categories?

Research Question II: What are the similarities and differences in gender-role portrayals between Chinese and U.S. television commercials regarding product categories?

As discussed previously, gender bias against women is still a problem in China and in the United States. Therefore,

H1: In both Chinese and U.S. television commercials, men will be shown more often in occupational roles than women.

H2: In both Chinese and U.S. television commercials, women will be shown more often in non-occupational roles than men.

Previous studies on advertising have documented that men are shown more often in high-level business and professional roles, whereas women appear more often in mid-level business and non-professional roles. Therefore,

> **H3**: In both Chinese and U.S. television commercials showing occupational settings, men will be portrayed more often in high-level business/professional roles than women.
>
> **H4**: In both Chinese and U.S. television commercials showing occupational settings, women will be portrayed more often in mid-level business/non-professional roles.

Previous studies on advertising have reported that women are more frequently portrayed in decorative roles than men. Therefore,

> **H5**: In both Chinese and U.S. television commercials showing non-occupational roles, men will be found doing recreational activities more often than women.
>
> **H6**: In both Chinese and U.S. television commercials showing non-occupational roles, women will be found in decorative roles more often than men.

China, compared with the United States, is still more traditional in its outlook. Therefore,

> **H7**: Male models in Chinese television commercials showing family settings will tend to play relaxing roles more often but family roles less often than male models in U.S. ones.
>
> **H8**: Female models in Chinese television commercials showing family settings will tend to play family roles more often but relaxing roles less often than female models in U.S. ones.
>
> **H9**: Women in Chinese television commercials will wear demure dress more often than their counterparts in U.S. ones.
>
> **H10**: Both young males and young females will be portrayed less frequently in Chinese television commercials than in U.S. ones.
>
> **H11**: Chinese television commercials will tend to use male voice-overs more often than their U.S. counterparts.

Research indicates that "collectivism" is a cultural value more prevalent in China, whereas "individualism" is more dominant in the United States. Therefore, H12: Both men and women will be portrayed more often in groups in Chinese television commercials than in U.S. ones.

DATA ANALYSIS

This section reports how data were collected, coded and analyzed in this cross-social and cross-cultural study of gender-role portrayals in Chinese and U.S. television commercials.

Sample Collection

Three Chinese television channels--Channel One (CCTV1) and Two (CCTV2) of the China Central Television and Shanxi Television (STV)--were selected for this analysis. CCTV1 and CCTV2 are both broadcast nationwide, whereas STV mainly serves the viewers in Shanxi Province, an industrial base in China. It is believed that STV's commercials may be representative of those aired by provincial television stations in the country because economic development and living standards in Shanxi are about average for the nation. Three "conventionally" selected U.S. television networks--ABC, CBS and NBC--for major research on U.S. television commercials (Dominick and Rauch, 1972; Gilly, 1988; Resnik and Stern, 1977; Stern and Resnik, 1991; Sengupta, 1995) were also selected for this study.

The sampling universe for this study comprised television commercials from the three Chinese channels and the three U.S. networks. Systematic sampling method successfully implemented in a previous study (Cheng and Schweitzer 1996) was used again to collect the entirely new data for this study. Two weeks' worth of prime-time television was videotaped simultaneously in China and in the United States. Two hours per night of commercial broadcasting were collected, giving a total of twenty-eight hours for each country.

The time frames for the recording in both countries were during the last week of June and the first week of November in 1996. Since there was no important holiday in either country during these two weeks, it is believed that they are quite representative of the average commercials aired in the two countries. The selection of June and November was also intended to give an equal chance to any possible seasonal differences in product categories advertised in different seasons.

Same sample dates were used for both countries, which included all seven days of the week. The time blocks for the sample were from 6:00 to 7:00 p.m. and from 9:00 to 10:00 p.m. each day for both countries. The selected two hours during prime time included major daily national newscasts as well as entertainment programs. Commercials from both countries were taped over the fourteen days of the two sample weeks by following the rotation principle developed by Katz and Lee (1992). Thus, for instance, CCTV1 and ABC were taped from 6:00 to 7:00 p.m., and CCTV2 and CBS from 9:00 to 10:00 p.m. first Sunday; STV and NBC were taped from 6:00 to 7:00 p.m., and CCTV1 and ABC from 9:00 to 10:00 p.m. first Monday. As a result, 542 Chinese commercials and 671 U.S. commercials were collected.

Coding Instrument

Since the purpose of this study was to examine the gender-role portrayals in the television commercials from China and the United States, commercials without adult male or female models were removed. Following the principle practiced by Gilly (1988) and Sengupta (1995), duplicately aired commercials were retained in this study. The final pool consisted of 247 commercials from China and 420 commercials from the United States.

The codebook for this analysis was largely developed on the basis of previous studies on gender-role portrayals in advertising. The "occupational" and "non-occupational" dichotomy, together with the subcategories in each of these two major categories, was based on the widely cited study done by Courtney and Lockeretz (1971). The classification of men's and women's roles in family were condensed from Sengupta's (1995) coding scheme because a pre-test indicated small numbers in most what could be capsuled into "family roles" in this study. The dichotomy in the dress worn by female models was also borrowed from Sengupta (1995). Age groups in the codebook were based on the categorization of ages used for population projections in the Statistical Abstract of the United States 1996. The coding variable regarding voice-overs was borrowed from Gilly (1988), and the product categories were based on Venkatesan and Losco's (1975) widely cited scheme, with "industrial products" as the sole addition because it was found in previous studies that industrial products were an important category in Chinese advertising (Cheng, 1994; Cheng and Schweitzer 1996). Finally, the variable of "number of models," men and women alike, in this codebook was based on other studies that explored the cultural content in advertising (Frith and Wesson, 1991; Mueller, 1987, 1992).

Coding Procedure

Coding for this content analysis was conducted at three levels. First, models in each commercial was coded into "occupational" and "non-occupational" roles. Then, the "occupational" roles were further coded into "high-level business," "professional," "entertainment," "mid-level business," "blue-collar," and "other." Because of the small numbers obtained for most of these sub-categories, "high-level business" and "professional," and "mid-level business" and "non-professional" were combined respectively in order to generate more meaningful results. In the meantime, "non-occupational" roles were further coded into "family," "recreational," "decorative," and "other." The third level of coding was focused on other variables regarding the models in each television commercial. "Family" setting in the non-occupational roles was further divided into "family roles," which included cooking, cleaning or childcare, and "relaxing," which referred to eating, sleeping or watching television. The ages and number of models in each commercials were also coded. While those variables regarding models were coded, the product or service advertised and the voice-over used in each commercial were also classified.

A total of 667 television commercials showing adult males or females or both males and females--with 247 from China and 420 from the United States--were coded independently by a pair of selected and trained coders who are fluent in both Chinese and English. The coders did not know the hypotheses for this study when conducting the coding. With a pre-test of thirty commercials from each country, the codebook was modified accordingly. When the coding was completed, a series of interjudge reliabilities were calculated by using a per-item-agreement method suggested by Kassarjian (1977) and Stempel (1989). Ten percent of the commercials from each country (twenty-five from China and forty-two from the United States) were systematically selected and respectively recoded for all variables by each of the two coders. The interjudge reliabilities between the two coders for all coded variables ranged from 89.4 to 100 percent. Each figure reached or exceeded the minimum interjudge reliability of 85 percent suggested by Kassarjian (1977). Therefore, the coefficients of reliability obtained are believed to be satisfactory. The considerably high coefficients of reliability here are understandable because of the simple nature of almost all variables in this analysis.

FINDINGS

Answers to the first research question can be largely obtained from Tables 1-7. As Table 1 presents, 17.6 percent of men and 5 percent of women in Chinese television commercials were portrayed in "occupational" roles, ($X^2 = 14.397$, $p < .001$, df = 1), while 48.7 percent of men and 32.9 percent of women in U.S. television commercials played such roles ($X^2 = 13.990$, $p < .001$, df = 1). These findings, therefore, supported Hypothesis 1. On the contrary, while 95 percent of women and 82.4 percent of men were shown in "non-occupational" roles in Chinese television commercials, 67.1 percent of women and 51.3 percent of men were shown in such roles in U.S. commercials (see Table 1). Thus, Hypothesis 2 was also supported.

A further look at the "occupational" roles found that 47.1 percent of men but no women were shown in "high-level business/professional" positions in Chinese television commercials ($X^2 = 8.341$, $p < .05$, $df = 2$). Similarly, 38.6 percent of men and 16.7 percent of women were shown in such positions in U.S. commercials ($X^2 = 15.947$, $p < .001$, $df = 3$) (see Table 2). Therefore, Hypothesis 3 was supported. Also in "occupational" settings, 66.7 percent of women and 23.5 percent of men in Chinese television commercials, and 64.3 percent of women and 39.3 percent of men in U.S. commercials were portrayed in "mid-level business/non-professional" roles (see Table 2). These findings supported Hypothesis 4.

A further look at the "non-occupational" roles found that while 47.2 percent of men and 22.4 percent of women in Chinese television commercials ($X^2 = 26.174$, $p < .001$, $df = 2$), and 43.1 percent of men and 20.5 percent of women in U.S. commercials ($X^2 = 28.218$, $p < .001$, $df = 3$) were shown doing "recreational" activities (see Table 2). These findings lent support to Hypothesis 5. In the meantime, 33.5 percent of women and 15.7 percent of men in Chinese television commercials, and 17.5 percent of women and 5.9 percent of men in U.S. commercials were depicted in "decorative" roles (see Table 2). So, Hypothesis 6 was supported.

Findings generated in Tables 3-7 indicate more similarities and differences between gender-role portrayals between Chinese and U.S. television commercials regardless of product categories. Men were shown "relaxing" more often in Chinese television commercials (89.8 percent) than in U.S. commercials (32 percent) in "family" settings, whereas they were found playing "family roles," such as cooking and cleaning, less often in Chinese commercials (10.2 percent) than in U.S. commercials (68 percent) ($X^2 = 45.181$, $p < .001$, $df = 1$) (see Table 3). These findings supported Hypothesis 7. However, while 45.3 percent of women in Chinese television commercials and 41.5 percent of women in U.S. commercials were shown "relaxing" in "family" settings, 54.7 percent of women in Chinese commercials and 58.5 percent of women in U.S.

commercials were found playing “family roles.” The differences found between women’s roles in “family” settings were statistically insignificant (see Table 3). Therefore, Hypothesis 8 was not supported.

When female models’ dresses were observed, women in Chinese television commercials were found wearing “demure” dresses (86.9 percent) more often than their U.S. counterparts (75 percent) ($X^2 = 9.111$, $p < .001$, df = 1) (see Table 4). This finding gave support to Hypothesis 9.

As far as the “ages of models” are concerned, 68.4 percent of men in Chinese television commercials and 44.4 percent of men in U.S. commercials were shown in the age group of eighteen to thirty-four ($X^2 = 41.467$, $p < .001$, df = 2). Similarly, 80.4 percent of women in Chinese commercials and 57.8 percent of women in U.S. commercials were portrayed in the same age group ($X^2 = 45.968$, $p < .001$, df = 2) (see Table 5). Surprisingly, these findings did not support Hypothesis 10.

The use of “voice-overs,” an important indicator of gender roles in television commercials, was also investigated. Results indicate that “male voice-overs” were almost equally far more dominant in commercials from both China (85.4 percent) and the United States (82.9 percent) (see Table 6). This finding was statistically insignificant, so it could not support Hypothesis 11.

With regard to the “number of models” in television commercials, 79.8 percent of men in Chinese commercials and 55.3 percent of men in U.S. commercials were shown in groups ($X^2 = 30.992$, $p < .001$, df = 1) while 73.2 percent of women in Chinese commercials and 51 percent of women in U.S. commercials were portrayed in groups ($X^2 = 21.476$, $p < .001$, df = 1). These findings supported Hypothesis 12.

Answers to the second research question can be found in Tables 8 and 9. Because many categories contain such small numbers that it is impossible to ascertain meaningful statistic differences (Wiles and Tjernlund, 1991). Nevertheless, three patterns regarding how gender-role portrayals and product categories are related in the television commercials from China and the United States are still quite clear. First, several products in both countries were male-dominant, showing more male than female models. These product categories included "food/non-alcohol beverages," "alcoholic beverages," "entertainment/information," "automobile," and "finance/real estate." Second, only one product category--"home appliances"--was female-dominant in the commercials from both countries, portraying more female than male models. Third, while "medicine" was male-dominant, and "clothing" and "cleaning products" female-dominant in Chinese commercials, "clothing" and "cleaning products" were male-dominant, and "medicine" female dominant in U.S. commercials (see Tables 8-9).

DISCUSSION

Presented in Tables 1-7, answers to the first research question indicate several similarities and a few differences between Chinese and U.S. television commercials regardless of product categories. First, the finding that both Chinese and U.S. television commercials portrayed men more often than women indicates that women are still underrepresented in the television commercials showing "occupational" roles in both countries because women account for 44.96 percent of the total work force in China (Public Information, 1995c) and 46.0 percent in the United States (Encyclopædia Britannica, 1997b).

The findings that in both Chinese and U.S. television commercials showing "occupational" settings, men were depicted more often in "high-level business/professional" roles, whereas women were shown more frequently in "mid-level business/non-professional" roles indicate that television commercials from both countries still serve to reinforce a global stereotype--"think manager, think male"--that Schein and others (1996) have criticized. What is more, commercials from both countries even extend this stereotype to "thinking professional, thinking male."

While men were found dominant in "occupational" roles in television commercials from both countries, they were shown up more frequently in some "non-occupational" roles that indicate fun. For example, they were found doing "recreational" activities such as sporting and vacationing more often than women in commercials from both countries. These findings indicates a further extension of the "think manager-think male" stereotype to "thinking recreation, thinking male." The finding that in "non-occupational" roles women were more often used as decorations for products advertised suggests that they were exploited by showing their faces and bodies more often in commercials from both countries.

In addition to the similarities in occupational and non-occupational roles played by men and women, "male voice-overs" were almost equally far more often used in commercials from the two countries. This finding clearly indicates that both China and the United States are still male-dominant societies today.

In the meantime, young models, men and women alike, were found portrayed more frequently than other age groups in both Chinese and U.S. television commercials. This similarity, again, presents a problem of advertising that some scholars criticized almost a decade ago--it tended to target toward young consumers more often than people of other demographic segments in the marketplace (Hovland and Wilcox, 1989). As veneration of the elderly is more endorsed in a traditional Eastern culture than in a modern Western culture (Mueller, 1987), it is surprising to find that both male and female young models were portrayed more often in Chinese than in U.S. commercials. In addition to advertising's "generic" interest in young consumers, what attracted its ampler attention to them in China is probably twofold. First, in China's ongoing transformation to a more consumer-oriented society (Pollay, Tse and Wang 1990), the youth is more liable than older people to consumption materialism (Xu, 1990). Second, many young consumers in China nowadays have more disposable income than older people because the economic reform has brought more money-making opportunities to the younger generation (Chinese Elderly News, 1995).

It is no exaggeration that sometimes Chinese television advertising reinforced more stereotyping than its U.S. counterpart. This stance is supported by the finding that male models in Chinese commercials played "relaxing" roles more often but "family roles," such as cleaning and cooking, less often than male models in U.S. commercials. In the last few decades, criticism on the portrayal of women merely as housewives and mothers probably has made U.S. marketers try to avoid such stereotypes. But Chinese marketers did not elicit as much criticism because little attention has been paid to gender-role portrayals in Chinese advertising.

Other two major differences found in this study involve the "dresses" worn by female models and "number of models" portrayed in television commercials from the two countries. First, women in Chinese television commercials were found wear "demure" dresses more often than their counterparts in U.S. commercials. This result suggests both social and cultural influences on Chinese advertising. Socially, government has been opposed to sexual liberation in China, and the new advertising law, effective since February 1, 1995, clearly disfavors using sex as a marketing tool (Guangming Daily, 1994). This result supports findings reported in previous studies on Chinese advertising that "sex" as a cultural value had a consistently low profile in Chinese advertising (Cheng, 1994; Cheng and Schweitzer, 1996; Cheng, 1996b). Culturally, seductively dressed women are often not respected in China because it in general is still less sexually liberated than the United States. So, using seductively dressed women to draw attention in advertising is not as effective in China as it might be in some other countries. Second, results of this study presented that both men and women were portrayed more often in groups in Chinese than in U.S. commercials. This finding was consistent with the results generated in other empirical studies that China is a collectivistic, group-based culture (Ting-Toomey, 1997).

The results that several products categories advertised in both Chinese and U.S. television commercials were male-dominant, showing more male than female models, are probably brought about by two reasons. For one thing, some male-dominant product categories like "alcoholic beverages" do have men as the major consumers, so advertisers may want to use the close tie between the men portrayed in commercials and the male consumers to help sell the products. The other reason for using male models more frequently than female models is because some of those products or services are consumed or provided by high-level business people and professionals. For example, "entertainment/information" often involves the latest technology, and "finance/real estate" often means the investment of large amount of money. As noticed previously in this study, men were dominant in such "occupational" roles as "high-level business/professionals," so it is "natural" for them to be also dominant in those product categories that imply a high social status. This again reveals that television advertising in both countries still helps reinforce the "think manager-think male" and the "think professional-think male" stereotypes.

The more frequent occurrences of women in "home appliances" may suggest similar reasons for marketers to use female models for this product category. On the one hand, women might still be the major users of "home appliances" such as refrigerators and microwave ovens. On the other hand, television advertising in these two countries, while serving to reinforce the "think manager-think male" and the "think professional-think male" stereotypes, still promotes another heavily criticized stereotype–"think housework, think female."

The differences between male-dominant and female-dominant product categories in Chinese and U.S. television commercials are strong indicators of the differences in advertising between these two countries. First, while "clothing" is a female-dominant product category in Chinese commercials, it is a male-dominant one in U.S. commercials. This difference may have much to do with the target consumers of this product category. In

China, "clothing," often advertised as fashion, is largely targeted toward women. But in U.S. commercials, this product category includes a lot of sports wear, which is more often than not targeted toward male consumers.

Second, commercials for "cleaning products" like detergents and trash bags still portrayed women more often than men in China, whereas they showed more men than women in the United States. This difference suggests the changes that U.S. marketers have tried to make under severe criticism on portraying women merely as housewives and mothers. Although in reality many men in China share house chores with women, it seems that advertising there still indulges itself in the outdated stereotype.

Third, while commercials for "medicine" portrayed more men in China, they showed more women in the United States. This difference is probably due to the different strategy marketers in the two countries used regarding gender-role portrayals. It is getting more common nowadays to see women recommending medications in U.S. television commercials. On the contrary, such wisdom still more often goes to men in Chinese commercials. This difference in marketing strategy suggests a difference in attitude that marketers in the two countries hold toward gender-role portrayals. It seems that Chinese marketers still feel comfortable about mainly showing men as the sage in commercials, whereas their U.S. counterparts have at least done something to avoid such criticism.

CONCLUSION

The findings generated from this project have several implications for advertising researchers as well as advertising professionals. First, stereotyping in gender-role portrayals is a cross-country and cross-cultural problem in advertising, so it deserves serious attention from advertising professionals and researchers in both China and the United States. Based on the findings of this study and other studies, there is still a long way to go before the problem of stereotyping in U.S. advertising can be fully solved. This journey appears even longer for Chinese advertising. A close reading of publications as

113

well as regulation and law on advertising in China finds that major attention has been chained either to the control of deceptive advertising or the techniques of copywriting and copydesigning. Little attention has been given to the cultural content of advertising in the country.

But since advertising does not operate in a vacuum, it calls for help from other sectors in society, particularly the advocates for women's liberation, to eliminate stereotyping in advertising. Since advertising is a cultural artifact (Dyer, 1982; Frith, 1995; Leiss, Kline and Jhally 1990) and its gender-role portrayals an important indicator for women's status in a country, any attempts to improve women's status should take advertising's portrayals of gender roles into serious account. Only when a sociocultural environment more supportive for the equality of men and women has been created can the problem of stereotyping in advertising fully solved.

The differences between television commercials from China and the United States, as reported and discussed above, imply sociocultural influences on advertising in the two countries. As sexual liberation is still more socially checked and less culturally endorsed in China than in the United States, it is not wise, and even not "safe," to show seductively dressed women in advertisements for either domestic or foreign products in China. As China is a typical Eastern culture that highly values collectivism (Ting-Toomey, 1997; Yum, 1997), it would be more appropriate and, therefore, effective for foreign products or services advertised in the country to portray men and women more often in groups rather than individually.

In sum, both similarities and differences found in this investigation of gender-role portrayals in Chinese and U.S. television commercials are closely related to the sociocultural contexts in the two countries. So, it calls for a more supportive sociocultural environment from each country to portray men and women more equally in advertising, and gender-role portrayals in advertising also need to fit into the "idiosyncratic" sociocultural reality of each country in order to be an effective marketing tool.

Table 1 Gender-Role Portrayals by Country

Roles	China				U.S.			
	Males		Females		Males		Females	
	n	(%)	n	(%)	n	(%)	n	(%)
Occupational	34	(17.6)	9	(5.0)	145	(48.7)	84	(32.9)
Non-occupational	159	(82.4)	170	(95.0)	153	(51.3)	171	(67.1)
	$X^2 = 14.397$***; df = 1				$X^2 = 13.990$***; df = 1			
Total	193	(100.0)	179	(100.0)	298	(100.0)	255	(100.0)

*** $p < 0.001$

Table 2 Occupational and Non-Occupational Roles by Country

Roles	China		U.S.	
	Males	Females	Males	Females
	n (%)	n (%)	n (%)	n (%)
Occupational roles				
High-level business /Professional	16 (47.1)	0	56 (38.6)	14 (16.7)
Entertainment	10 (29.4)	3 (33.3)	26 (17.9)	13 (15.5)
Mid-level business /Non-professional	8 (23.5)	6 (66.7)	57 (39.3)	54 (64.3)
Other	0	0	6 (4.1)	3 (3.6)
	$X^2 = 8.341$*; df = 2		$X^2 = 15.947$***; df =3	
Total	34 (100.0)	9 (100.0)	145 (99.9)	84 (100.1)
Non-occupational roles				
Family	59 (37.1)	75 (44.1)	75 (49.0)	106 (62.0)
Recreational	75 (47.2)	38 (22.4)	66 (43.1)	35 (20.5)
Decorative	25 (15.7)	57 (33.5)	9 (5.9)	30 (17.5)
Other	0	0	3 (2.0)	0
	$X^2 = 26.174$***; df = 2		$X^2 = 28.218$***; df = 3	
Total	159 (100.0)	170 (100.0)	153 (100.0)	171 (100.0)

* $p < 0.05$; *** $p < 0.001$

Percentages may not total 100.0 because of rounding.

Table 3 Gender Roles in Family by Sex

	Males		Females	
Roles	China	U.S.	China	U.S.
	n (%)	n (%)	n (%)	n (%)
Family roles	6 (10.2)	51 (68.0)	41 (54.7)	62 (58.5)
Relaxing	53 (89.8)	24 (32.0)	34 (45.3)	44 (41.5)
	$X^2 = 45.181$***;	df = 1	$X^2 = 0.262^{n.s.}$;	df = 1
Total	59 (100.0)	75 (100.0)	75 (100.0)	106 (100.0)

*** $p < 0.001$; $^{n.s.}$ = not significant

Table 4 Female Models' Dresses by Country

	China		U.S.	
Dresses	n	(%)	n	(%)
Demure	152	(86.9)	195	(75.0)
Seductive	23	(13.1)	65	(25.0)
		$X^2 = 9.111$***;	df = 1	
Total	175	(100.0)	260	(100.0)

*** $p < 0.001$

Table 5 Models' Ages by Sex

	Males				Females			
Ages	China		U.S.		China		U.S.	
	n	(%)	n	(%)	n	(%)	n	(%)
18-34	132	(68.4)	134	(44.4)	144	(80.4)	145	(57.8)
35-54	28	(14.5)	126	(41.7)	18	(10.1)	97	(38.6)
55 or older	33	(17.1)	42	(13.9)	17	(9.5)	9	(3.6)
	$X^2 = 41.467$***; df = 2				$X^2 = 45.968$***; df = 2			
Total	193	(100.0)	302	(100.0)	179	(100.0)	251	(100.0)

*** $p < 0.001$

Table 6 Voice-Overs by Country

Voice-overs	China		U.S.	
	n	(%)	n	(%)
Male	222	(85.4)	344	(82.9)
Female	38	(14.6)	71	(17.1)
	$X^2 = 0.734^{n.s.}$; df = 1			
Total	260	(100.0)	415	(100.0)

$^{n.s.}$ = not significant

Table 7 Number of Models by Sex

Number of Models	Males				Females			
	China		U.S.		China		U.S.	
	n	(%)	n	(%)	n	(%)	n	(%)
One	39	(20.2)	135	(44.7)	48	(26.8)	123	(49.0)
Two or more	154	(79.8)	167	(55.3)	131	(73.2)	128	(51.0)
	$X^2 = 30.992$***; df = 1				$X^2 = 21.476$***; df = 1			
Total	193	(100.0)	302	(100.0)	179	(100.0)	251	(100.0)

*** $p < 0.001$

Table 8 Product Categories and Gender Roles in Chinese TV Commercials

Product categories	Males	Females	Ratio of commercials with males to commercials with females	Gender roles portrayed more often
Food/non-alcohol	30	24	1.25	Male
Clothing	22	30	0.73	Female
Beauty/personal care	14	14	1.00	Equal
Medicine	29	21	1.38	Male
Cleaning products	1	7	0.14	Female
Travel	0	0	----	----
Furniture/housing	2	2	1.00	Equal
Home appliances	20	32	0.63	Female
Personal accessories	4	9	0.44	Female
Alcoholic beverages	22	12	1.83	Male
Entertainment/ information	15	9	1.67	Male
Automobile	23	13	1.77	Male
Finance/real estate	7	3	2.33	Male
Institution/ public services	0	0	----	----
Industrial products	4	3	1.33	Male
Total	193	179		

Table 9 Product Categories and Gender Roles in U.S. TV Commercials

Product categories	Males	Females	Ratio of commercials with males to commercials with females	Gender roles portrayed more often
Food/non-alcohol	69	63	1.10	Male
Clothing	15	11	1.36	Male
Beauty/personal care	1	20	0.05	Female
Medicine	42	51	0.82	Female
Cleaning products	7	4	1.75	Male
Travel	4	1	4.00	Male
Furniture/housing	13	8	1.63	Male
Home appliances	15	21	0.71	Female
Personal accessories	0	0	----	----
Alcoholic beverages	11	2	5.50	Male
Entertainment/ information	39	20	1.95	Male
Automobile	42	36	1.17	Male
Finance/real estate	18	3	6.00	Male
Industrial products	0	0	----	----
Institution/ public services	22	15	1.47	Male
Total	298	255		

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Of Heathens and Heroines: Constructions of Gender and Empire in the Woman's Foreign Missionary Press, 1869-1895

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At their annual meeting in 1895, the women of the Woman's Foreign Missionary Society of the Methodist Episcopal Church discussed whether to change the name of their publication. At issue was the deletion of the word 'heathen'. First published in 1869, Heathen Woman's Friend was intended to provide "interesting facts and incidents illustrating that [missionary] work furnished by those laboring in heathen lands."[1] By 1895, however, some women in the organization found the use of the term 'heathen' objectionable. An alternate title of Woman's Missionary Friend was suggested that would "retain the popular part of our former name" but would avoid the "misnomer" that was considered a "hindrance" to missionary work. The board was divided. Nearly half opposed the name change and wanted to keep "the name that expresses so much and which is freighted with such sacred associations." To change the name would be "unwise" and "work injury to the [missionary] cause," these women argued.[2] After nearly 30 years, the women of the Methodist Episcopal Church were questioning the use of a derogatory term to describe women in other countries. Prior to 1895, the publication's title, based on a contradictory premise of superiority and friendship, was considered natural and appropriate.

While missionary women called women in other countries "heathens," they referred to themselves as heroines. Mrs. Frank Butler, editor of Woman's Missionary Advocate, another Methodist Episcopal women's missionary publication, wrote that her publication existed "to call attention to the great fact that Christian women are trying to educate and bring to the knowledge of Christ the women in heathen lands. It is calling to the women of the Methodist Episcopal Church, South, and trying to prove to them ... that [they] are capable of

... heroic endeavor."[3] The debate over the descriptive term 'heathen' in a publication of the Woman's Foreign Missionary Society of the Methodist Episcopal Church coupled with repeated assertions of missionary women's "heroism" and other exalted qualities, highlights questions of woman's role and of images of women in other countries. Such issues are at the heart of this study.

At the turn of the twentieth century, the United States was undergoing massive sociocultural and political change reflected in social movements and debates across all sectors of society, including the debates over woman's role in society and the role of the United States in the balance of worldwide power. That is, two significant ideologies -- gender ideology and ideologies of nation, specifically national expansion in the form of imperialism -- were in flux during the final decades of the nineteenth century. The term "gender" is used here to denote the socially constructed nature of gender roles where social and cultural relations construct the meanings and definitions of these roles. While such constructions are significant in themselves, they acquire additional relevance when situated within an analysis of larger sociopolitical power structures. The terms "imperialism" and "empire" are used interchangeably in this study to refer to ideas and actions founded on one country's presumed superiority over another as manifest in military, economic, or ideological aggression. The desire to convert so-called "pagan" countries to Christianity was, and is, a form of ideological aggression related to a sense of internationalized Manifest Destiny and is thus associated with the ideas and values of economic or political imperialism. This study is concerned with ideas of empire as well as ideas of gender, as reflected in women's activities in the church during the final decades of the nineteenth century.

During these years, women emerged in greater numbers in public and political spaces and sought to transform politics and society on a variety of levels, through suffrage agitation, temperance crusades, labor unions, women's clubs, and in the church.[4] Within the foreign missionary movement, especially, women made a significant contribution. Following the Civil War, between 1868 and 1873, women founded their own foreign mission organizations, which, though fragmented into different denominations, formed the largest women's movement in the late nineteenth century.[5] Moreover, these missionary groups actively used their publications to inform their membership, recruit new members and inculcate a body of beliefs and values central to the missionary effort.

The purpose of this research is to examine the role of women's missionary texts in the construction of a gender ideology that may be linked to imperialist thought and action: How are the ideologies of gender and empire linked and how are they mutually reinforced and sustained? The interrogation of either ideological formation requires inquiry into its overlap with the other, especially if such inquiry reveals the origins and subsequent naturalization of these formations; according to Anne McClintock, "No social category should remain invisible with respect to an analysis of empire."[6]

THE WOMAN'S FOREIGN MISSIONARY MOVEMENT

Although missionary efforts had been established in denominations earlier in the century, it was only after the Civil War that women split to form their own missionary organizations.[7] Despite men's early involvement in the formation of mission groups and their efforts at suppressing women's leadership, by 1870, women comprised most of the staff of many foreign mission societies and had formed their own denominational boards independent of men's organizations.

Women's prominence in the church was not a phenomenon that emerged only from conditions in the middle and final years of the nineteenth century. Rather, it reflected the continued emergence of feminine identification with religion, a process that began after the American Revolution. According to historian Barbara Welter, U.S. society increasingly divided along gender lines, with men assuming roles in politics and business, and women as custodians of the home, morality, and religious institutions.[8] Precursor and legacy of this split was a continued division between the 'hard' business of politics and commerce, and the 'softer' rewards of spirituality. Human agency and the drive to succeed were counterweighted with submissiveness to divine power. Thus, weakness, morality, charity and submission became both cornerstones of religiosity and exalted feminine character. Religion and a particular brand of femininity reinforced each other as "women ... took Christianity and molded it to their image and likeness."[9] With their now 'naturalized' and divinely-inspired inclination for such service, women increasingly entered -- then led -- missionary endeavors, effectively managing their own organizations, administering programs, collecting funds, recruiting personnel, managing overseas operations, and publishing mission newspapers.[10]

Due to their belief in the transformative potential of a text, editors and missionary officials considered missionary publications credible and meaningful vehicles for their messages.[11] These publications were disseminated not only to subscribers, but also to participants of religious reading and study groups. Consistent with their view that the act of reading had a powerful impact on readers, many denominations and mission organizations used reading programs as a means of education and included religious newspapers and periodicals as part of a scheduled reading and study plan.[12] Women's mission organizations published newspapers and other literature to provide study materials for their membership. An organization's newspaper was intrinsic to its operation, and readings from it were integrated into mission meetings in the form of group study.[13] Harriet Merrick Warren, editor of Heathen Woman's Friend, informed her readers that copies of that paper would be furnished gratuitously to any society that needed them for special meetings focused on its content or to any organization seeking to secure regular subscribers to the publication.[14]

At the end of the nineteenth century, as women redefined their roles in social life, the United States considered its role in the worldwide balance of power, a debate that heightened at century's end with involvement in the Spanish American War. Although Great Britain was considered the preeminent world power in global political and economic relations, U.S. leaders sought productive trade relations and political alliances through an international policy influenced by the non-interference mandate of the Monroe Doctrine and the Open Door policy that encouraged economic exchange advantageous to both importing and exporting countries. Even though U.S. leaders preferred harmonious commercial relations rather than "hazardous colonial acquisitions," they intervened directly when economic interests were threatened, either by local insurgencies or perceived violations of U.S. property rights in other countries, creating rationale for more direct intervention and an internationalized manifest destiny that suffused U.S. actions with the religious ideals of evangelism and salvation.[15] The zeal to conquer, the energy to expand and the desire to convert 'others' to a better standard of life (measured in U.S. terms) was reflected on many levels of U.S. life, including the missionary impulse. Thus, missionary women were integral to the contested and changing ideologies of gender and nation that may have reinforced and sustained one another but that were in formation and transformation at the close of the nineteenth century.

CULTURE AND 'PRODUCTIVE DISCOURSE'

Questions concerning the role of missionary texts in the construction of ideologies of gender and empire require examination of these texts through a conceptual lens derived from cultural studies of the media as well as colonial discourse theory. Explication of specific themes used in this analysis are described below, but conceptually, colonial discourse theory provides an apparatus for uncovering the discursive strategies and conventions that reinforce the idea of one nation's superiority over another. This ideological function of texts is further reinforced by the notion that texts possess a productive power through their presentation of a particular range of discourse. In other words, media texts, through the selection and presentation of information, perform an ideological function. Moreover, this repetition of themes and ideas contributes to hegemony, whereby such ideas are accepted as commonsense.

Examination of the ideological and hegemonic role of media texts derives from a critical cultural perspective of media discourse whereby media texts are conceived as intertwined with sociocultural realities, shaping ideas of a culture and of the world.[16] This study focuses on women's publications as equally indicative of, and imbricated in, both women's culture and U.S. culture. Among publications produced by and for women, missionary publications enjoyed a substantial circulation, and, as described above, these periodicals were central to the missionary movement, instilled as a form of group study, and freely distributed to any organization that used them for study purposes. Thus, missionary periodicals exemplify the relationship between culture and media and provide source material for uncovering links between media texts and ideas prevalent in a given culture.

Critical cultural analyses of women's publications from the nineteenth century are needed. Although some studies have examined how the content and format of women's periodicals constructed and transmitted certain ideologies of womanhood, research on publications from this time period has been conceptualized primarily in terms of social movement theory; that is, these publications have been considered in terms of their contribution to the sustenance and promotion of a particular social movement, especially the suffrage movement.[17] Colonial discourse and its ideas of empire have been noted in mainstream newspapers of the late nineteenth century,[18] but the role of women's publications in this construction has been unexplored. This study assumes that women were active agents in the creation of ideologies of nation and national expansion; moreover, it is assumed that evidence of this may be sought in the publications that provided "social knowledge" for women in a way the mainstream publications of their day did not.[19] It is significant that women in the missionary movement crafted ideas of themselves and of their role in the church and society as they related to women in other countries. But the women's foreign missionary press has not been studied as a formative force in the creation of a gender ideology and in ideologies of empire.

Women's missionary publications need to be examined for their role in constructing a particular ideology of womanhood and as forms of colonial discourse. As stated earlier, however, the purpose of this research is not to locate the repetition or reinforcement of ideologies of empire (as would be expected in a missionary publication), but to trace how these ideas may be linked to ideas of womanhood -- that is, how is colonial discourse intertwined with prescriptions of gender ideology in these publications?

METHOD

In order to explore a link between a particular gender ideology and imperialist ideology, the themes and discursive strategies employed in support of these ideologies must be uncovered. Discourse is defined here as not only textual elements but also the social context in which they are uttered or produced and where the production of meaning occurs. As Ernesto Laclau has defined the discursive, it is "[not] conceived as a level nor even as a dimension of the social, but rather as being co-extensive with the social...."[20] In addition, discourse is conceived in a post-structuralist sense that describes its function in the social construction of ideas and sociocultural phenomena.[21] Discourse is then related to ideological formation, whereby texts disseminated and consumed in a social context produce, define, or recreate a system of ideas and meanings. Discourse analysis is a method that studies the ideological underpinnings of a text by identifying recurring patterns in discourse, such as the repetition of certain themes, phrases, rhetoric and so on.[22] This discursive arena provides the boundaries and limits within which certain ideas are expressed, and a given text is ideological to the extent that it conforms to a particular set of themes -- what

Michel Foucault calls "discursive formations" and Stuart Hall defines as a "field of meanings."[23]

Colonial discourse theorists have identified discursive strategies -- or a discursive arena -- that reinforce attitudes of dominance and subjugation. For instance, Edward Said has noted that the process of identity formation or the existence of an ideological, hegemonic, colonial discourse is a form of projection, whereby qualities of oneself are displaced onto another so that, as identity is crafted, it produces a self-supporting discourse as well as a discourse of the 'other'. Said's concern is how representations of the Orient reflect and reproduce the political and social systems in which they are embedded, thus revealing how Orientalist discourse is more about the Western mind than it is about the Orient. The "real" Orient is excluded in favor of a representation that reproduces Western thought and power: "One ought never to assume that the structure of Orientalism is nothing more than a structure of lies and myths.... Orientalism is more particularly valuable as a sign of European-Atlantic power over the Orient than it is a veridic discourse about the Orient."[24] Orientalist discourse, then, is produced in support of Western culture at the price of excluding the 'Oriental other'.

This notion of an 'other' against which one is defined is central to colonial discourse theory as framed by theorists such as Homi K. Bhabha, Ernesto Laclau, Slavoj Zizek and Gayatri Spivak.[25] Bhabha draws on Jacques Lacan's idea of the "Imaginary" as a product of the "mirror stage" of development whereby one forms an ideal image of oneself, an image that, as a reflection, is both outside of oneself but also reflects one's essence. As a result, a contradiction of identification and alienation is imbued in this stage. Bhabha applies Lacan's

Imaginary to an analysis of colonial discourse, where identity is formed through the image of an 'other,' outside oneself but also a projection of oneself resulting in discursive constructions that are based on, and that reinforce, the "recognition and disavowal of racial/cultural/historical differences."[26] Bhabha identifies a four-part strategy in colonial discourse that incorporates a mixture, or contradiction, of pleasure/displeasure, attraction/repulsion, equivalence/difference, and so on. Therefore, what is postulated is that colonial discourse incorporates, reproduces and reflects this notion of an outside that is both attractive and a source of pleasure and mastery, yet something to be abhorred and rejected.

Feminist theorists have been critical of theories that posit such dualistic antagonism and erasure of the other as only constitutive of the colonizing subject.[27] For instance, Gayatri Spivak is concerned about the "historically muted" subaltern, a muting that occurs in the act of representing women in other countries.[28] Indeed, analyses of colonialist rhetoric have identified strategies by which this muting occurs as well as strategies that reflect the contradictory states of attraction and repulsion that Bhabha identifies.[29]

The concern here is whether the content of women's missionary publications conformed to colonial discourse themes and how a particular ideology of womanhood was intertwined or incorporated with these themes. Four themes, derived from colonial discourse theory and the studies of colonialist rhetoric cited above, were used in this analysis: exploration, domestication, evaluation, and exaltation. The themes represent rhetorical or discursive strategies that perpetuate the idea of one nation's superiority over another, as well as notions of an 'other' against which self/nation is defined. Each thematic category is described below, including examples of discourse that would be categorized within each theme.

The theme of exploration refers to images and ideas related to the myth of empty, open lands to explore and conquer, and of a people waiting for, or needing, salvation. It is also related to "the gaze" of a colonizer. As David Spurr writes, "The gaze makes possible an understanding of the non-Western world as an object of study, an area for development, a field of action."[30] For example, the following quote illustrates the use of exploration rhetoric: "[A]s the South, and the East, and the isles of the sea have come within the range of our vision, as there dawns upon our waking senses a realization of the fact that eight hundred and fifty-six millions of human souls [sic] are wandering in spiritual darkness ... our hearts are growing world-wide, and would clasp these millions...."[31]

The domestication theme incorporates ideas and images of domestic purity, including an abhorrence of dirt and filth as well as attitudes that nature must be controlled and harnessed for human use. Anne McClintock, for instance, analyzes the commodification of soap as a symbol of colonization. She observes that the word "domesticate" is linked to the word "dominate" and so locates domesticity as a marker that points to "social relations of power."[32] This theme is evident in this description of the zenana, a segregated living space for women in India: "One would scarcely have the heart to confine a respectable dog in such wretched quarters.... How impossible to describe anything so gloomy and horrible, so shockingly disgusting. ... Three small rooms opened into a little filthy court."[33]

Evaluation is the act of classifying people in other countries along a hierarchical continuum of civilization and savagery. This may result in condemnation of a particular behavior perceived as savage or it may be indicated in the celebration of behavior that reflects Western ideals. It is a discursive strategy, as Spurr points out, dependent on a ranking that conforms to the logic of the dominant power and that affirms one's own cultural values and structures.[34] The example is taken from an article where a missionary woman describes her frustration at teaching an Indian woman the skill of knitting and her delight at the "bright-eyed" women who learn the skill:

> "The natural indolence of the Indian woman, with habits of idleness, prevent unaided application of her mind to searching out the principle of any new work. ... So, though we may show and explain patiently twenty times a piece of knitting ... the next week we find the needle rusting in the last stitch we saw finished [the week before]. ...
>
> I delight to visit ... a group of bright-eyed women, who have won my heart by their gentle, pleasant manners, eagerness and aptness to learn. ... Some of them ... have been so diligent and patient with their knitting."

The theme of exaltation refers to one's own self-aggrandizement. Notions of superiority are included in this theme as well as the attendant fear that comes from seeing the Other as a threat to that superiority.[35] An example: "'Woman's work for women,' in its missionary significance, develops and engrosses every high and holy impulse belonging to womanhood."[36]

Using these themes as a lens, the colonial discourse of the 'other' in women's foreign missionary periodicals may be categorized and analyzed with respect to ideas of gender. The study includes the missionary publications of the Methodist Episcopal Church: Heathen Woman's Friend and Woman's Missionary Advocate. The Methodists were the largest group within the women's foreign missionary movement. After its first year of operation, the Woman's Foreign Missionary Board of the Methodist Church had 218 societies and nearly 6,000 members; by 1895, they had a combined membership of 150,000, and fifteen years later, that number rose to 267,000.[37] Although the Methodists served several countries (such as China, India, Africa and Mexico) and areas within the United States, this study focused specifically on China and India. The content of 197 issues, from the years between 1869 and 1895,[38] was categorized according to the above themes in order to answer the following research questions:

1. What are the ideas and images of U.S. women in these publications?
2. What are the ideas and images of Chinese and Indian women in these publications?
3. How are these ideas and images conveyed with respect to the colonial discourse themes of exploration, domestication, evaluation and exaltation?

A discursive analysis of these texts accomplishes the main purpose of this study: interrogating the role of the women's missionary press in the construction of a gender ideology that may be linked to an ideology of empire.

FINDINGS

Content in the two missionary publications studied did conform to colonial discourse themes, with exaltation being the most frequent theme invoked and domestication the least frequent. Through the use of these themes, missionary women crafted a gender ideology suited to their missionary role and that justified their efforts at converting women in other countries to Christianity. In other words, the gender ideology of missionary women was infused with the religious mission of evangelism. The keynote of the missionary movement's gender ideology was the heavy emphasis on religious doctrine and the divine mandate and sanction of a particular role for women. Necessarily, in support of this self-image, missionary women crafted images of women in other countries based on perceptions of their degradation, their heathen religious practices, and the evil of social customs that kept women secluded and that, therefore, prevented them from realizing their true destiny as women through religious, moral and social influence on others. Religiosity infused the ideology of womanhood; a missionary's concern for the salvation and uplift of women in other country cemented the links between gender ideology and the ideological expansion of Christianity and, thus, between ideas of gender and ideas of imperialism and empire.

Exploration

The exploration theme was conveyed in a variety of ways, through seed and planting images and in rhetoric that presented native lands as "wide open" to missionary conquer. Butler frequently wrote editorials presenting the missionary conquest: "The whole world has opened its gates, and Christianity is marching in with steady steps," and "This is the true mission-work, at home or abroad. It comprehends within its scope the whole world as its object."[39] Images of planting and harvesting were also used: missionaries "plant a vital force in the midst of heathenism," and "heathen lands" were depicted as "fields ... ripe for the harvest."[40] Women missionaries were praised for their roles in an enterprise that would "conquer the world for Christ."[41] In passages such as these, the people of China and India were portrayed as available subjects for the missionary project of conversion.

The women's missionary societies saw their mission of Christian conversion as a form of "progressive Christianity," akin to nationalist ideals founded on a principle of expansion. At the close of the nineteenth century, historians, notably Frederick Jackson Turner, were proclaiming that the United States was able to realize progress because it was able to expand westward. In other words, the acquisition of new territory secured for the country its democratic nature and its future.[42] This "manifest destiny" became internationalized at the end of the century as missionaries (and others) subscribed to the belief that the United States would find a new frontier through missionary activity in foreign lands. Seeing themselves as an extension of the country, missionary women believed their work would only thrive "while it advances," and that "forward movement" would be realized in obeying "God's holy command to 'go and teach all nations'."[43] Such beliefs are consistent with messages of exploration, and therefore, of empire.

A sense of exploration is conveyed as well through the format of women's missionary publications. The content of these publications included reports of the missionary societies, editorials, pleas for funds and new recruits, and letters from missionaries in the field. These accounts conveyed a sense of exploration through the technique of "the gaze," whereby missionaries sent reports of their travels to U.S. readers and imparted themselves with the authority of an omniscient observer. These accounts served to create a "definition of reality" for supporters of the missionary cause who remained in the United States. As Tony Bennett observes, this power of defining reality "is attributable largely to the service [a publication] perform[s] in making us the indirect witness to events of which we have no first-hand knowledge or experience."[44] The exploration theme was evident in Heathen Woman's Friend and Woman's Missionary Advocate in the sense that their content, through use of 'the gaze', defined 'reality' and spoke with authority on matters of the church, foreign lands, missionaries and the religious nature of women.

Domestication

The domestication theme was the least represented of the four themes used in this analysis. Women missionaries placed more emphasis on the role of women in society (categorized as 'evaluation' and 'exaltation') rather than on distinctly domestic injunctions. References to filth and darkness, however, do predominate in the discourse, thus echoing McClintock's observations regarding support for the imperialist effort through the analogy of soap as a cleansing influence in dirty/impure countries.[45] Instead of soap, however, missionary women proclaimed themselves and their religion as the cleansing and brightening influence to the "night of heathenism," "darkened souls" and the "filth" of harem life and other Chinese and Hindu customs.[46] Women missionaries used such images to distinguish themselves from native women. For instance, Elsie Maude Sites, a missionary to China wrote of the "heathenism" and the "low, dark houses" in the "filthy streets" of China, but she kept herself removed and privileged to what she witnessed by assuring readers that in traveling to these places, she, "of course, rode in a sedan chair carried upon the shoulders of chair-bearers, or coolies."[47]

References to filth and impurity were also used to justify the establishment of The Woman's Friend, a publication distributed in four Indian languages to women in the segregated living areas of Indian zenanas. Upon teaching Indian women to read, missionary women decreed that these women be supplied with "appropriate" reading material as an alternative to the "filthy and impure" literature previously available to them. The Woman's Friend was hailed as "pure literature" and a "light [that] shall shine ... until all India is lit up by the very light of heaven."[48] By using images of filth or dirt to support the infusion of missionary literature into Indian zenanas as a cleansing presence, missionary women were invoking images of domestication as domination.

Evaluation

As they traveled to other lands to convert 'heathen women,' missionary women discovered practices and customs that appalled their sense of true, Christian womanhood. Idol worship, "superstitions," and the seclusion of women in harems and zenanas were frequent targets.[49] Idol worship and superstitions were seen as directly counter to Christian teaching and thus received ample criticism. The seclusion of women was contraposed to education and a belief that women should be present in a society in order to exert a beneficial influence. Indeed, positive evaluations were given native women who were educated, who could read and write, and who had, through Christian example, encouraged others in their homes or social circles to convert to Christianity. Moreover, education was praised as creating "desirable wives and mothers."[50] If, as Spurr suggests, such evaluations reinforce the values and logic of the dominant nation, then these evaluations suggest an ideology of womanhood based on the virtue of education and the power of woman's influence, specifically on the home front. This is particularly evident when evaluations of women in other countries are compared to the qualities exalted in women missionaries, described in the section below.

The evaluations most often noted of missionary women toward women in other countries are criticisms of vapidity or laziness, the oppression and seclusion of women, religious practices, women's clothing, and the use of adornments such as jewelry, which was observed to be excessive. The dress of Indian and Chinese women was described in detail, especially the jewelry. Usually, after writing about the profusion of bracelets and nose rings, missionaries implored U.S. women to be more modest in clothing and accessories, exhorting them to use their money in support of the missionary cause instead: "If Christian women would lay aside this custom, borrowed from the heathen, of making a display of silver and gold, how much money they might save to aid in efforts for the redemption of their lost sisters in heathen lands."[51]

The seclusion of women was fiercely criticized as missionaries determined that such seclusion prevented a woman's education and, therefore, her conversion and ultimate influence on her country. Often included in this condemnation were criticisms of male privilege and cruelty: "Among the higher castes, women spend their time, apart from what is devoted to their husbands and household duties, in listless idleness, rendered painful ... by the narrow seclusion into which they are thrust."[52] Indian women in zenanas were said to be "in a state of perpetual childhood," and in this "social inferiority" and "total ignorance," "everything noble and pure in her character" had been "destroyed."[53] Chinese women in harems were described as being in a state of "imprisonment."[54] Husbands were depicted as indifferent or unconcerned, at best, and, at worst, as cruel, violent and oppressive. Often, a curious woman was contraposed with her domineering husband. One Indian woman was reported to have told a missionary that she condemned the custom of living in seclusion, but that if she broke the custom, it would disgrace her husband.[55] Husbands were "not to be trusted" and could disrupt a missionary's work, according to a missionary who wrote that a woman in India was "much interested" in her Christian teachings, but the lessons were interrupted by the arrival of the woman's husband.[56]

Criticisms of a woman's ignorance or laziness were often used to support the need for education, both for women in other countries and for women in the United States. Anger over the seclusion of zenanas and harems was motivated by a belief in the value of education. If women were secluded, they could not be taught, hence the attacks on "ignorance" and "darkness of mind." An article that praised the education of women in India as opening "the dungeons" and lifting "countless millions of ignorant women from the pit of degradation," was accompanied by an article on missionary reading circles and the importance of education for U.S. women.[57] Thus, the rhetoric of evaluation is used not only to disparage customs and lifestyles of women in other countries, but as Spurr maintains, to reflect and reinforce one's own values and beliefs as well.

Exaltation

Whether to uplift themselves, to convince the men of the Methodist Church hierarchy of their suitability for missionary work, or to raise money and recruit converts, missionary women were skilled at the art of self-exaltation. Of the four themes, exaltation was the most frequent rhetorical strategy. Missionary women exalted themselves in their "women's work for women," in their religious superiority (both as compared to women in other countries and to men in the missionary effort), in their expressions of true love and altruism, and in their sacrificial surrender and devotion to Christ's work. Missionary women compared themselves to women of the Bible and thus presented themselves as chosen and blessed. They described their service to women in other countries as a form of love and proclaimed themselves the "noblest women of the land."[58]

Invocations that women were best suited for missionary work because they could reach the women in other countries was the most frequent use of self-exaltation rhetoric. Women, it was believed, were powerful and beneficial influences; if they could be converted, then the country could be saved. Because of cultural custom and the fact that many women were secluded in harems and zenanas, men could not visit or speak with them. Therefore, missionary women fulfilled a unique and special role, one they invoked repeatedly and frequently. References were made to the "benighted women" in other lands "who can only be reached by women," and missionaries exalted themselves claiming to be "the heathen woman's only chance to obtain a knowledge of the gospel" and thus be "saved." [59] Woman's special gift, it seems, was her ability to influence others, and this exalted role was not reserved for U.S. women. Women in other countries were seen as powerful conduits of Christianity if they could be converted. As one Methodist minister was quoted, "You cannot evangelize a country until you convert the women."[60] This was also reflected in editor Warren's writings: "An educated woman in China is like a bright star ... an educated woman is a power to enlighten, to reform, and to bless the community to which she belongs." Warren believed that Chinese customs and traditions limited a Chinese woman's influence for good, but she still considered these women, and all women, as "fostermother[s] of religion and of religious ideas. Whether the stream of moral influence be great or small ... here is its fountainhead the world over."[61]

Missionary women were praised and honored in these publications, but editors Warren and Butler occasionally wrote editorials accusing U.S. women of indifference, idleness or extravagance in an effort to raise more money or to encourage women to become missionaries. In one editorial, Butler observed that heathen women possessed more religious zeal than Christian women in the United States.[62] Other efforts were made to shame U.S. women into donating more money to the missionary cause or to accuse them of spending money unwisely on personal indulgences. The preference, of course, was that U.S. women would wholeheartedly support the missionary effort through contributions, soliciting new members for the missionary society, and encouraging women to become missionaries. Each issue read for this study contained a plea for new subscribers to the publication as well as treatises on the need for more missionaries.

Editorials cautioning U.S. women against inappropriate behavior, in addition to the laudatory articles by and about missionary women, craft a clear picture of the gender ideology espoused by the woman's missionary movement. Women were to be modest, patient, loving, dutiful and modest. They were to "resist sensuousness" and aspire to enjoyments that were "higher, nobler and more rational."[63] But this goodness and patience were to be coupled with determination, force of character, endurance and a well-trained mind. A missionary woman was to be strong, "not given to fanatical, hysterical, or emotional views of things," and she should be an educated woman, "vigorous, faithful, patient, and practical, who [can] grasp things with a strong hand...."[64]

In sum, missionary women crafted a gender ideology consistent with their Christian mission and recreated it through their missionary publications using themes of colonial discourse. This ideology was founded on a belief in woman's morality and in woman's special gift of influence, as well as on a belief in the values of education and action driven by one's conviction. Women in other countries were subject to this same view of womanhood. Because U.S. women saw women in other countries as restricted by the filth, heathenism, and oppressive social custom in those countries, missionary women were commissioned to convert these women to Christianity so that they may realize their true roles as women in society. Thus, missionary women could speak of gentility as well as strength, of patience as well as perseverance, and of heathenism as requiring one's heroism.

DISCUSSION

The gender ideology espoused by missionary women was not reserved for U.S. women; it formed the interpretations, evaluations and exhortations toward women in other countries as well. Cataloguing missionary evaluations of women in other countries reveals the ideology of womanhood to which missionary women subscribed. It may also have been a projection of their own conflicts within a particular gender identity. That is, missionary writings contain rhetoric that may be interpreted as a critique of the ideology of U.S. womanhood that conformed to what Barbara Welter, and other historians, have termed "true womanhood." Missionary women in the late nineteenth century transgressed the sphere of domesticity in order to fulfill their calling to evangelical church ministry. Historians have noted that Victorian ideology was based on a notion of separate spheres -- that women should tend to the home and the moral rearing of children, while men tended to the public sphere of business and politics.[65] The highest role for a woman was her role as wife and mother. Missionary women were unmarried and operated in the public sphere, albeit a public sphere sanctioned by its religious character. Still, they rejected what they may have perceived as the seclusion of the American home, the vapidity of female culture based in domestic pursuits and idleness, and the oppression of an androcentric society. Yet they were conflicted because of their religious character. In other words, religious women, specifically missionary women, confronted a deep contradiction: they believed in the Victorian ideals of religiosity and purity, but in pursuing their call to service, they transcended the domestic sphere prescribed by these ideals. Their discourse on zenanas and harems -- the seclusion of women to a particular sphere -- may have served to craft an ideology they could embrace, an ideology that was both a mixture of Victorian womanliness and what would later be termed the "New Woman."[66]

The "New Woman" was educated, often unmarried, or married at a later age, and active in the public spheres of business, medicine or academia. Although such a position left women vulnerable to ridicule, or worse, attacks on their moral character, church women could comfort themselves in their morally exalted nature and public role. Thus, though they transgressed their proper sphere, missionary women may have been comforted by the idea that this transgression was divinely mandated, an idea reinforced by articles in these publications, such as a reprint of an address by a Methodist minister, who asserted that "the missionary vocation, of all others, is that which most successfully develops the highest virtues in the character of women."[67] This may also explain why the rhetoric of domestication appeared less often than other themes, especially that of exaltation -- specifically moral self-exaltation. Clinging to their Christian identity and their moral virtue was central to the social acceptability or rationalization of the woman missionary's occupation. Thus, missionary women embraced and upheld that which preserved their exalted Christian natures.

Missionary women cemented this identity for themselves by applying this ideology to women of other countries, as they did in their treatises on zenana and harem life. To attack the seclusion of the zenana and the harem was, perhaps, to confront the ideology of separate spheres and to observe a woman's mental lethargy and indolence was to support woman's education in India and China as well as in the United States. It was the light of Christian education, the saving influence of the Gospel, that would allow Chinese and Indian women to realize their true destiny and calling as moral guideposts for the home and the nation -- surely an ideal to which missionary women themselves aspired. In other words, one could fight the oppressive conditions that limited women, that kept them confined to the domestic sphere and at the mercy of a domineering husband, by clinging to the teaching of the Gospel and the role of Christianized womanhood -- a state that could allow transgressing one's sphere as woman with assurance of divine sanction. Thus, as heathen women were converted to Christianity, U.S. women were converted to a gender ideology consistent with their actions, their beliefs and their aspirations.

CONCLUSION

The purpose of this research was to examine the role of women's missionary texts in the construction of a gender ideology that may be linked to imperialist thought and action. It sought to address an overarching question of whether ideologies of gender and imperialism were linked or were mutually reinforced and sustained in the mid to late nineteenth century. In the two publications studied, Heathen Woman's Friend and Woman's Missionary Advocate, content conformed to themes of colonial discourse described as exploration, domestication, evaluation and exaltation. In addition, the content that comprised these discursive themes also projected a particular vision of womanhood based on woman's morality and a belief in her power to influence others in beneficial ways. This role was dependent on a woman's education as well as her conviction to serve others. Missionary women exalted themselves as unique vessels for the missionary endeavor and sought to encourage a woman's intellectual, as well as religious, development.

This gender ideology was uniquely suited to the missionary vocation. Women in the nineteenth century, as today, were not a monolithic group. Suffragists, working women, upper-class club women, women in the temperance movement, and women in the professions each encountered conflicts between their goals and aspirations and how it may have clashed with social and cultural prescriptions for 'appropriate' gender behavior. Missionary women negotiated these terms by balancing 'public-sphere' activity with invocations of morality and religiosity. It was an ideology that upheld woman's advancement, education, and role in the church and the world, while heralding woman's gentility, morality, and special influence on family members and society.

Finally, as indicated by the discourse in missionary publications, this gender ideology was exported to women in other countries. They were expected to convert to Christianity and educate and improve themselves so that they, too, may influence others in beneficial ways. Missionary women, who believed that Indian and Chinese women were oppressed by religious and social customs and thus prevented from realizing their true role in society, saw themselves as saviors and heroines. Content in these publications, then, supported an ideology of womanhood, an ideology that was linked to the missionary endeavor, and thus, to the U.S. endeavor for supremacy in other countries. Whether in religious terms, or in political and economic terms, this endeavor was the quest for empire.

ENDNOTES

1. H.M. Warren, "Prospectus of The Heathen Woman's Friend," Heathen Woman's Friend, May 1869, 5.

2. "Resolution," Heathen Woman's Friend, December 1895, 157-161.

3. "Editorial Notes," Woman's Missionary Advocate, February 1882, 1; emphasis in original.

4. Histories that explore this notion include: Nancy F. Cott, The Bonds of Womanhood: "Woman's Sphere" in New England, 1780-1835 (New Haven: Yale University Press, 1987); Sara M. Evans, Born for Liberty:A History of Women in America (New York: The Free Press, 1989); Eleanor Flexner, Century of Struggle: The Woman's Rights Movement in the U.S. (Cambridge: Harvard University Press, 1975); Lori D. Ginzberg, Women and the work of Benevolence: Morality, Politics and Class in Nineteenth-Century U.S. (New Haven: Yale University Press, 1990); Charles E. Rosenberg, "Sexuality, Class and Role in Nineteenth-Century America," in The American Man Eds. Elizabeth and Joseph Pleck (Englewood Cliffs, NJ: Prentice-Hall, 1980), 219-254; Sheila M. Rothman, Woman's Proper Place: A History of Changing Ideals and Practices, 1870 to the present (New York: Basic Books, 1978); Mary P. Ryan, Cradle of the Middle Class: The Family in Oneida County, New York, 1790-1865 (New York: Cambridge University Press, 1981); Mary P. Ryan, Women in Public: Between Banners and Ballots, 1825-1880 (New York: Cambridge University Press, 1992); Anne Firor Scott, Natural Allies: Women's Associations in American History (Urbana: University of Illinois Press, 1991); Carroll Smith-Rosenberg, "The Hysterical Woman: Sex Roles and Role Conflict in Nineteenth-Century America," Social Research 39 (Winter, 1972): 652-78; Barbara Welter, "The Cult of True Womanhood," American Quarterly 18 (Summer, 1966): 151-74.

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12. Ibid., 74.

13. Brumberg, "Zenanas and Girlless Villages," 352-353.

14. H. M. Warren, "A word to Western women," Heathen Woman's Friend, July 1869, 14.

15. Tony Smith, The Pattern of Imperialism (Cambridge: Cambridge University Press, 1981), 145; Frank H. Tucker, The White Conscience (New York: Frederick Ungar Publishing Company, 1968), 152.

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31. "Spiritual Growth of Our Work," Woman's Missionary Advocate, September 1884, 9.

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33. "Contrasts in Zenana Teaching," Heathen Woman's Friend, April 1872, 265.

34. Spurr, 71.

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36. "Woman's work for women....," Woman's Missionary Advocate, January 1885, 12.

37. Anne Firor Scott, "Women, Religion and Social Change in the South, 1830-1930," in Religion and the Solid South, Ed. Samuel S. Hill, Jr. (Nashville and New York: Abingdon Press, 1972), 106; Hill, 48.

38. Specific years studied were 1869 (May-December), 1870-1872, 1879, 1889-1893 of Heathen Woman's Friend, and January 1880 - September 1886 of Woman's Missionary Advocate. These years were randomly selected to present a sample of ideas and themes from a 26-year period.

39. "Is Thine Heart Right?" Woman's Missionary Advocate, November 1885 7; "Ephphatha," Woman's Missionary Advocate, June 1885, 8.

40. "President's Address," Woman's Missionary Advocate, July 1886, 4; "Seventh Annual Meeting...," Woman's Missionary Advocate, July 1885, 4.

41. "Another Cycle Completed," Woman's Missionary Advocate, June 1886, 9.

42. Among numerous other works exploring the same theme, Turner authored an essay, "The Significance of the Frontier in American History," and a book, The Frontier in American History, describing his vision of the frontier. For a discussion of this thesis, see David Noble, The End of American History (Minneapolis: University of Minnesota Press, 1985).

43. "Lord, Increase Our Faith," Woman's Missionary Advocate, April 1886, 9.

44. Bennett, 296.

45. McClintock's study focuses on British advertisements, which may explain its absence in U.S. women's discourse. McClintock, Imperial Leather, 207-231.

46. See, for example, "Show me the path os life," Woman's Missionary Advocate, January 1884, 8; "China Mission," Woman's Missionary Advocate, December 1884, 2; "Thoughts on our mission work," Woman's Missionary Advocate, January 1885, 11.

47. "Report from Elsie Maude Sites," Heathen Woman's Friend, March 1889, 250.

48. "The value of the zenana paper," Heathen Woman's Friend, March 1889, 238-239.

49. For example, "Foot Binding -- Its Origin and End," Woman's Missionary Advocate, August 1880, 6-7; "The Outlook for 1882," Woman's Missionary Advocate, January 1882, 8; "China Mission," Woman's Missionary Advocate, August 1883, 2; "Thoughts on Our Mission Work," Woman's Missionary Advocate, January 1885, 10-12; "Report from Elsie Maude Sites," Heathen Woman's Friend, March 1889, 250; "Personal Mention," Heathen Woman's Friend, September 1889, 67.

50. "China Mission," Woman's Missionary Advocate, August 1883, 2.

51. "Are we fully Christianized?" Heathen Woman's Friend, October 1869, 37.

52. "Woman in India," Heathen Woman's Friend, July 1869, 9.

53. "To the Young Ladies...," Heathen Woman's Friend, May 1870; "Woman in India," Heathen Woman's Friend, August 1869, 18-19.

54. "China Mission," Woman's Missionary Advocate, December 1884, 2.

55. "Representative Indian Women," Heathen Woman's Friend, November 1870, 52.

56. "Another Zenana Convert," Heathen Woman's Friend, May 1871, 122; "A Day in the Zenana," Heathen Woman's Friend, August 1870, 14.

57. "Progress of Female Education in India," Heathen Woman's Friend, April 1870, 85.

58. "Seventh Annual Meeting...," Woman's Missionary Advocate, July 1885, 3.

59. "Seventh Annual Meeting...," Woman's Missionary Advocate, July 1885, 3; "Her Perfect Work," Woman's Missionary Advocate, September 1886, 8.

60. "Facts for Christian Women," Heathen Woman's Friend, July 1869, 11.

61. "On Morality and China," Heathen Woman's Friend, May 1869, 6.

62. "Is Thine Heart Right?" Woman's Missionary Advocate, November 1885, 7; see also, "Message to Girls," Woman's Missionary Advocate, April 1884, 9-10.

63. "Reprint of Baccalaureate Address...," Woman's Missionary Advocate, October 1880, 9.

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MAINSTREAM NEWSPAPERS' COVERAGE OF THE NORTH AMERICAN FREE TRADE AGREEMENT, 1991-1996

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ABSTRACT

This study showed that there was a significant difference in the coverage of NAFTA by six mainstream newspapers during different phases of the agreement: negotiations, congressional approval and implementation.The coverage was indexed to what government officials and congressional members had to say about the accord, and focused primarily on the participants in the NAFTA debate and their arguments, rather than on the provisions and implications of the agreement.

MAINSTREAM NEWSPAPERS' COVERAGE OF THE NORTH AMERICAN FREE TRADE AGREEMENT, 1991 - 1996

Introduction

Early in 1991, the governments of Canada, Mexico, and the United States started informal negotiations to create a tri-national free trade zone. The accord, that came to be known as the North American Free Trade Agreement, would result in the most powerful economic bloc in the world, "... embracing more than 360 million people whose annual economic activities exceeded $6.5 trillion.".[1] The pact consisted of a plan to reduce trade barriers over a 15-year span, while establishing specific provisions to open Mexican markets to the other two countries' investments, energy, telecommunications, financial and trucking sectors, and rules to protect the three nations' agricultural, textile, apparel, and automotive sectors.[2]

Formal negotiations of the agreement started in June 1991. Eleven months later, the Bush administration submitted to Congress the initiative for NAFTA to be approved using the fast-track mechanism, which allows no amendments once the agreement negotiations' have officially concluded. These negotiations ended in August, 1992, and the accord was officially signed in December that year by Canada's Prime Minister Brian Mulroney, Mexican President Carlos Salinas de Gortari, and U.S. President George Bush.

Once in office, the Clinton administration negotiated side agreements on labor, environmental and dumping issues, addressing in this way some of the main criticisms of the original agreement. This second round of negotiations ended in early August, 1993. NAFTA and the side treaties were submitted to vote in the House of Representatives Nov. 17, 1993, where it was approved by a 234-200 vote. Three days later, the agreement was approved by the Senate. Implementation of NAFTA started Jan. 1, 1994.

For the purpose of this study, total duration of the NAFTA process has been divided in three phases: the negotiations phase, that encompassed from Jan. 1, 1991 through early August, 1993; the approval phase, ranging from mid August to December, 1993; and the implementation phase, extending from Jan. 1, 1994 through December 31, 1996.

The rationale for an agreement such as NAFTA was specified early in the negotiations: On the one hand, there were the economic reasons of increasing commercial power relative to other geographical economic blocs and of improving economic and social welfare levels derived from comparative advantages and economies of scale. On the other hand, the treaty sought to consolidate complementarities between each country's resource base. Both Mexico and Canada have energy production surpluses, while the United States is energy short; Mexico is technology-short, while both Canada and the United States have strong technological sectors; Mexico has a surplus of labor, a resource of which the other countries are short; Canada and the United States are net exporters of capital, a scarce resource in Mexico; and, finally, Canada has the pure water reservoirs needed in Mexico and some parts of the United States.[3]

The intensity of the debate and the divisiveness spurred by NAFTA was highlighted by the media's coverage at different stages of the process, particularly during the months preceding the congressional vote late in 1993. This study was intended to analyze this coverage as presented in six mainstream newspapers: New York Times, Washington Post, Wall Street Journal, Los Angeles Times, Chicago Tribune, and USA Today.

Statement of the problem

The purpose of the study was to analyze major newspapers' coverage of NAFTA during the negotiations, approval, and implementation phases. Special attention was paid to whether or not the coverage was "indexed" to particular sources, as suggested by Bennett (1990).

The study was addressed to answer the following research questions:

1. Was there a significant change in NAFTA's coverage between the aforementioned phases?
2. If coverage varied between the three periods, what were the main differences?
3. Was newspaper coverage of NAFTA "indexed" to the opinions and statements of particular groups?

4. If the indexation process occurred, which were the "leading" voices to which media pegged its coverage?

This study is pertinent because as an economic, political, cultural, and social event, NAFTA generated intense media coverage at certain moments. Despite these peaks, and despite the fact the accord has generated news over an extended period, the characteristics of the coverage itself have been little studied. Much of the attention, instead, has been dedicated to studying the characteristics of the NAFTA debate, its participants, and their positions. It is important, however, to start analyzing how the media handle complex multidimensional issues such as NAFTA to determine the role its coverage has over decision-making processes and public opinion formation.

Literature Review

On the characteristics of the NAFTA debate, Cohen and Blecker (1996), Grayson (1995), and Wiarda (1994) agree that the debate on the free trade pact between Canada, Mexico, and the United States transcended purely economic issues to become one of the most passionate discussions of the decade, and certainly the most intensely debated economic issue in recent history.

For Cohen and Blecker (1996), one of the main characteristics of this debate was the creation of the strangest bedfellows imaginable. The authors contend that "Traditional alliances and political partisanships were replaced by a most complex mosaic of disparate groups thrown together on the basis of how they perceived themselves to be net winners or losers of the Mexican free trade initiative." (p. 251) In accordance, each side in contention exerted tremendous pressure on Congressional members to ensure a favorable vote. Rough estimates of expenditures in lobbying efforts by the pro-NAFTA coalition amounted $50 million or more.[4]

According to Wiarda (1994), the only thing in common possessed by the anti-NAFTA leaders[5] was their opposition to NAFTA. The reasons why each one of them opposed the agreement, though, were as dissimilar as the groups themselves.

On the issues debated during the NAFTA process, Wiarda concluded that the two "real" issues in the debate were the environmental impacts of the agreement, particularly along the U.S.-Mexican border, and the fear of job losses. Other worrisome issues mentioned by the author were the prejudice and superiority feelings against Mexico, and Mexico's political system,[6] as well as its lax legal and law-enforcement systems. A final group of elements in the debate, according to Wiarda, dealt with political issues, among others, the fact the NAFTA became an important topic during the 1992 presidential elections and the 1994 congressional races. But many of the latter topics were characterized by Wiarda as red-herring or smoke-screen reasons that concealed more specific agendas, not always related to the agreement.

An interesting conclusion of Wiarda's work is that the major difference NAFTA made was to introduce a myriad of new elements to the negotiations of trade agreements, aspects that traditionally had been excluded from them, such as human rights, environmental concerns, equity considerations, immigration issues, net benefits and/or losses in jobs, and, particularly, an on-going discussion over sovereignty issues. Cohen and Blecker (1996) also noted that the debate dealt primarily with NAFTA's expected impacts on investment levels, net job changes, wage differentials and trade volume.

Kahane (1996) analyzed the voting patterns of Senators and House Representatives controlling for the variables he considered fundamental in the debate on NAFTA: Immigration flows, expected impact of the agreement on the environment, expected job gain/loss, presence of organized labor, and ideology (party affiliation). The author concludes that, while the last three aspects were very important in explaining how Congress representatives voted, environmental issues where less important, although still an influence on their decisions. Immigration issues bore some importance on the Representatives' vote but not on the Senator's vote. On this issue, Cohen and Blecker contended that because there were so many conflicting interests, when deciding how to vote on NAFTA, the closest predictor of how House Representatives voted was the geographical zones they represented.[7]

Wiarda (1994) posited that until NAFTA free trade agreements were covered as any other economic news by the media, usually highlighting results and explaining its main provisions. Earlier trade agreements were usually negotiated by specialists behind closed doors, and the public was not informed nor involved in the discussions (p. 119). A similar trend occurred in Canada in the mid-1980s. In a study about television's coverage of the US-Canadian Free Trade Agreement --NAFTA's immediate predecessor--, Block (1992) concluded that journalistic treatment of the agreement paralleled the business lobby's effort to "sell the deal," without paying attention to the substantive implications for the Canadian economy and society of a free trade scheme. TV coverage focused on the controversy around specific issues, and the reactions of those for and against the agreement (rational and logical the former, emotionally charged the latter), but never discussed if freer trade with the United States was what Canada needed to maintain or improve its economic stance in the world. This study pointed out two relevant issues: First, the extent to which the media go beyond the "who-said-what" scheme to deal with the actual implications of each position's contentions. Second, in Canada the debate was pegged to the "big businesses' " discourse.

Such finding has been also addressed by Bennett (1990). Discussing a new theory about press-state relations in the United States, the author tested the hypothesis that news professionals tend to index their coverage of events to the voices of legitimized sources, such as the government and members of Congress, following the aspects and range of topics proposed by them. Bennett posited that other sources' voices are allowed into news reports when they express consent or opposition to what is being said in the mainstream debate by the legitimate sources. This means, Bennett hypothesized, that news coverage responds to the priorities of the sources to whom reports are usually indexed, and to this extent, is cued by them:

> "...both the academic literature and a casual look at the news suggest that societal voices falling outside the official range of debate are admitted occasionally into journalistic accounts. However, the circumstances surrounding such inclusions usually involve civil disobedience, protests, or lawless acts that establish negative interpretative contexts for those voices. (p. 107)"

Bennett analyzed the coverage the New York Times gave to U.S. foreign policy issues regarding Nicaragua during the 1980s. This topic was illustrative, Bennett argued, because it presented several moments of strained relations between the Reagan administration and Congress over the approval of military aid to the Contra rebellion in the Central American country. Bennett's results showed that an overwhelming majority of opinions covered belonged to administration officials, while coverage was cued by Congress' dynamics in dealing with the topic. Furthermore, he found that public opinion was marginalized from the coverage, and, when considered, it was discredited as uninformed and irrelevant.

Dickson (1992) replicated Bennett's study, expanding the analysis to include the coverage of the issue by the Washington Post. She found a striking similarity in the type of sources both newspapers sought for information. The New York Times and the Washington Post relied basically on information provided by administration officials and members of Congress, both supporters and opponents of President Reagan's foreign policy proposals. Presenting dissenting official voices was the way both newspapers understood "objectivity."

Furthermore, Dickson contended that while the coverage of the topic was not uncritical nor was the press "duped," both newspapers let legitimate sources determine the valid issues in the debate. Criticism from the press, then, was more reactive than proactive. It usually occurred in response to governmental statements on the issue (p. 570).

Bennett's and Dickson's findings regarding the sources on which mainstream newspapers rely, are similar to Leon Sigal's (1973). Studying the pattern of channels and sources used by the New York Times and the Washington Post in stories dealing with national and foreign news, Sigal found that U.S. official sources accounted for 46.5 percent of the sources cited, and state and local government officials, for an additional 4.1 percent. When the stories had only one source, the proportion of official sources increased significantly. Furthermore, the majority of international news considered in the study relied, as well, upon official sources in foreign countries. Finally, when only staff-written stories were analyzed, the percentage of U.S. officials cited as sources rose to 49.9 percent, while the other categories decreased slightly.

According to Sigal, the explanation for the heavy reliance on official sources is that reporters, regardless of their bureaus and their beats, tend to gather information mainly through routine channels, such as official proceedings, press releases, press conferences and nonspontaneous events, as opposed to informal and "enterprise" channels, which demand a more active role from the reporter in gathering information. By doing this, the press allows its sources to select the news (p. 130). Paletz and Entman (cited by Dickson, 1992, p. 564) contend that this reliance upon official sources is necessary, because public officials, who are nearer than anybody else to the centers where important political decisions are made, usually are easy to access. Therefore they provide information that individuals who are far from those centers consider "certified" as news (Sigal, 1973, p.130).

According to the Media System Dependency model outlined by Ball-Rokeach and DeFleur (1976), individuals develop dependency relations with the media while seeking to fulfill their information needs and goals. The nature of these relations, and their intensity, can unleash cognitive, affective and behavioral effects. Ambiguity and a threatening environment (of which the uncertainty generated from the NAFTA debate is an example) stimulate individuals to develop stronger relations with the media system. The authors contend that although mass media do not have the power to determine uniformly the exact content of every individual's interpretation of the situation, it can limit the range of possible interpretations by controlling the information presented.

Schmitt (1995) studied the relation between media coverage of NAFTA and the formation of public opinion. The author found that increased coverage of the accord led not only to public awareness on the issue but also to an increase in the number of people expressing an opinion about the accord. The first opinion poll that included NAFTA was published in October, 1992, more than two years after negotiations started. At that moment 53 percent of those polled had no opinion on the free trade agreement. While television, newspapers, and "popular" magazines maintained moderate coverage of the agreement, the situation remained unchanged. But in August 1993, coverage increased dramatically, while the percentage of undecideds or persons without an opinion reported by the polls decreased to 16 percent by November that same year. Schmitt found strong negative correlations between the frequency of newspaper stories and television stories, and the number of undecideds reported by opinion polls (p. 182).[8]

Method

A sample of 215 articles was drawn from a universe comprised of 4,827 articles containing the words North American Free Trade or NAFTA, appeared in the NewsAbstracts database. The sample included articles published in the New York Times, the Wall Street Journal, the Washington Post, Los Angeles Times, USA Today, and the Chicago Tribune, between January 1st. 1991 and December 31st., 1996. These six newspapers were chosen based on three criteria:

First, the six newspapers are among the top eight based on the number of stories published about the subject. Second, all six are influential newspapers with large readerships in and outside their cities of origin. Their wire services provide information to many smaller newspapers around the country. Additionally, a balance was sought between nationally-oriented newspapers (for example the New York Times and USA Today) and more regionally-oriented newspapers (such as Chicago Tribune and Los Angeles Times). Geographical balance is important because it allowed for differences in NAFTA's coverage due to the characteristics of regional economies, proximity to the other members of the accord, and proximity to national decision-making centers. Third, different newspapers address different types of readers. The Wall Street Journal is oriented toward business readers. Together with the New York Times and the Washington Post, the Wall Street Journal addresses policy-makers. Meanwhile, the Chicago Tribune and Los Angeles Times, while covering national issues in depth, focus thouroughly on news of local issues. Finally, USA Today is oriented to a more general readership, both in terms of occupation and geography.

The sample was pulled randomly, from the list of 2,380 articles published by the six newspapers under study. This list was organized by date of publication.

Of the 215 articles included in the sample, 12 were discarded, mainly because they consisted of editorials, editorial cartoons, commentary pieces, and, in one case, because the story was truncated. The remaining 203 stories were coded for the following categories:

- Newspaper that published the story
- Date the story was published

- Length of the story in paragraphs
- Number of paragraphs that mentioned NAFTA
- Focus of the story. If more than 50 percent of the paragraphs in the story dealt with the agreement, the story was considered to be focused on NAFTA.
- Number of sources cited in the story
- Stance of the sources regarding NAFTA: pro-agreement, against-agreement, undecided or not stated.
- Source's affiliation. Sources were classified as belonging to federal and local governement; Congress; political parties; business sectors; labor unions; environmental and other citizens groups; experts (such as, independent consultants, analysts and academia); public opinion; foreign countries (regardless of sector); or other.
- Issues mentioned in the articles as benefits or concerns about NAFTA. The list of issues included: Jobs; wages; trade volume; economic characteristics of NAFTA members in terms of market size, competitiveness or protectionism; environmental issues; relocation of enterprises; trade policies; US trade relations with foreign nations, other than Mexico and Canada; transportation; investment; differential benefits among economic sectors, regions, and/or through time; operative issues regarding the implementation of the accord; sovereignity issues; cultural issues; political implications of NAFTA in the signatory countries; immigration issues; economic growth; equity and social mobility; and other reasons.
- Number of paragraphs that elicit positive, negative, mixed and undetermined evaluations of NAFTA.

Reliability was established on the basis of agreement between three coders, the author and two Master's level students, who coded a subset of 20 articles (10 percent of the sample). Overall reliability level was 93.9 percent, with percentage of agreement ranging from 85.1 percent for the evaluation of NAFTA by paragraph to 100 percent on four variables, including focus of the story, title, date and page. Level of significance was set at .05 percent.

Results

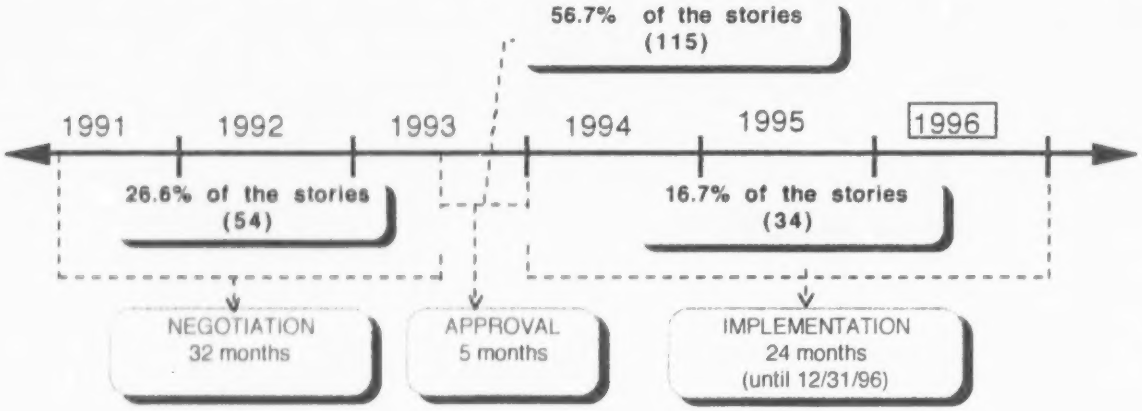
Overall this study showed that there was a significant difference in the NAFTA's coverage between the negotiation, approval, and implementation phases, and that the coverage was indexed to what government officials --at the federal and state levels-- and congressional members had to say about the accord.

The study provided enough information to answer each of the four research questions stated above.

The Phases In The NAFTA Process

The coverage of NAFTA focused heavily on the debate that preceded its approval in Congress in Nov. 1993. Although the arguments in the debate were, in general, not new, the frequency and intensity with which they were reported during the approval period doubled that of the previous phase and more than tripled that of the implementation phase (See Figure 1).

Figure 1. Number of stories by NAFTA phase (absolute values and percentages)


56.7% of the stories
(115)
1991
1992
1993
1994
1995
1996
26.6% of the stories
(54)
16.7% of the stories
(34)
NEGOTIATION
32 months
APPROVAL
5 months
IMPLEMENTATION
24 months
(until 12/31/96)

Total number of stories: 203
Differences significant at p<.0001.

The heat and the polarity of the debate created a vote-counting frenzy and fueled numerous political negotiations that caught the interest of the public and stimulated a coverage by the media based mostly on the "horse-race" aspects, focusing on those groups who had their positions more defined. Media evaluations of the extent to which these groups' allegations were true or feasible were less common.

NAFTA was the primary focus of the stories analyzed during the first two periods, when three out of every four stories dealt mostly with the accord.[9] However, the situation reversed during the implementation. Only 35.3 percent of the stories of this phase focused on NAFTA.[10]

The depth of coverage varied between phases. From the negotiation to the approval stages the number of stories with 10 or more paragraphs on NAFTA increased from 61.1 percent to 67 percent of the total for each period, while during the implementation phase the interest in NAFTA diminished significantly: 76.4 percent of the stories of the period had less than 10 paragraphs dealing with the agreement. During this phase there were 6 lengthy articles with 30 or more paragraphs detailing the impact of NAFTA on different regions of the country, particularly along the Mexican border

Sources

Overall, the majority of stories (82.2 percent) had 10 or fewer sources talking about the agreement. 51.7 percent had 5 or fewer. This is consistent with the general distribution of paragraphs on the topic: 45.8 percent of the stories had less than 10 paragraphs and 40.4 percent had between 10 and 19 paragraphs. This finding suggests that there is a positive relationship between the number of paragraphs on NAFTA in a story and the number of sources cited.

However, when number of sources was controlled by phase, the following results emerged:

a) During the negotiations and approval the number of sources was very similar. An average of 50 percent of the stories (51.9 percent for the first period, and 49.6 percent for the second one) had 1 to 5 sources. The second highest percentage in both stages corresponded to 6 to 10 category (35.2 percent versus 34.8 percent respectively).

b) The difference between these two phases is that during approval time, so much attention was being placed on the political negotiations and the vote-count to pass the agreement, that about 11.3 percent of the stories had 11 or more sources.

c) During the implementation phase, on the contrary, the second highest percentage (26.5 percent) of number of sources corresponded to stories with no sources at all. This represented 45 percent of the 20 stories which had no sources. The first two categories (no sources, and 1 to 5 sources) represented 85.3 percent of the stories of the period.

Regarding the source's stance on the agreement, it is clear that the approval phase was the period when more and more diverse opinions were covered. By contrast, during the negotiations phase mainly pro-NAFTA sources contributed information, since the agreement was initially negotiated by specialists outside the public's "eye," which prevented other sectors from learning the particulars of the accord (See table 1).

Table 1

Sources' stance by NAFTA phase

	Phases			Total
Source's stance	Negotiations	Approval	Implementation	Number of stories with sources [a]
Pro-NAFTA [b]	• 64.5 percent of the stories in this period presented 1 to 5 sources	• 60 percent of the stories had 1 to 5 of these sources • 13 stories (approx. 9 percent) of the period presented 6 to 10 positive sources	• 79.4 percent of the stories had no positive sources	125
Against NAFTA [c]	• 57.4 percent of the articles contained no sources of this type	• 53 percent of the stories of the period had 1 to 5 negative sources • 6.1 percent of the stories had 6 to 10 negative sources	• 73.5 percent of the stories had no negative sources	100
Number of sources whose stance was not stated or unclear for the three periods				138

[a] The sum of the number of stories is more than 203 because several stories had more than one type of source.

[b] $p < .001$

[c] $p < .002$

Sources were analyzed based on their affiliation to specific sectors of society (See Table 2). Overall, government and Congress were the main sources of information cited by the newspapers under study. Nevertheless, this situation was not constant thorugh all the phases. Out of 98 stories that cited government officials, 62.2 percent belonged to the approval period. During the implementation period the government officials lost importance as sources: only 9.2 percent of those stories citing them belonged to this period. This represented one fourth of the articles for the period.[11]

Since Congress was the focus of attention during the approval phase, 72 percent of the stories of this period contained reference to what congressional sources said, compared to only 24 percent during the negotiations period -- despite the confrontation about the fast-track vote early in 1992-- and 4 percent during the implementation phase.

Although it was clearly stated in the stories who were the agents contending in the debate, not all the sides got the same attention in terms of attribution. The numbers in Table 2 show that in newspapers' coverage of NAFTA, sources from specific sectors had "leading roles" in the stories, while the rest of the actors were just part of the chorus.

Table 2
Sources' affiliation. Frequency with which representatives of each sector were cited.

Sector	Percentage
Government (federal or local)	48.3
Congress	36.9
Experts	25.6
Business	20.0
Political parties	17.7
Labor unions	14.8
Environmental and citizens groups	12.8
Former officials	4.9
Opinion polls	3.9
Other sources	21.7

Not all the leading roles, though, belonged to pro-NAFTA sources. Anti-agreement sources like Ross Perot, received a great deal of attention too.

The Elements In The Discourse

The impact of the agreement on jobs and wages was the main argument overall (See Table 3). However, it was particularly relevant during the negotiation and approval phases. While 72.2 percent of the stories during the former and 69.6 percent of the stories during the latter dealt with these issues, this aspect lost importance when Congress passed NAFTA.

Trade and investment policies were mentioned throughout the three phases. Newspapers consistently referred to NAFTA as an accord that pursued the lowering of tariffs and the promotion of investment in North America over a 15-year period. However, these issues were emphasized as an element in the debate during the negotiation (64.8 percent) and approval phases (56.6 percent). During the implementation period these subjects fell to 32.4 percent of the stories of the period.

Environmental issues lost importance in the debate gradually from phase to phase. The opposition of environmental groups to the initial agreement negotiated by the Bush administration contributed to the fact that 59.3 percent of the stories of the negotiation period mentioned these issues. During the approval phase, some environmental and citizens groups continued questioning the agreement, but some of the biggest national environmental groups (WWF, Audobon, etc.) endorsed it after a side agreement on the subject was negotiated by the Clinton administration. This contributed to a lowering of this topic's profile (31.3 percent) during the second phase. Finally, during the implementation period it fell even lower, to 26.5 percent of the stories.[12]

Coverage By Newspaper

The frequency of stories for each newspaper showed that the Wall Street Journal, the New York Times and the Washington Post published the most stories on the agreement (See Figure 2), but their coverage differed in two aspects: the length of the articles and the number of paragraphs dedicated specifically to NAFTA.

In general, all newspapers stories' average length was between 10 and 19 paragraphs. The Washington Post had an equal percentage of stories between 20 to 29 paragraphs long (See Table 4).

Table 3
Aspects mentioned in the articles as benefits or concerns about NAFTA. All Phases.

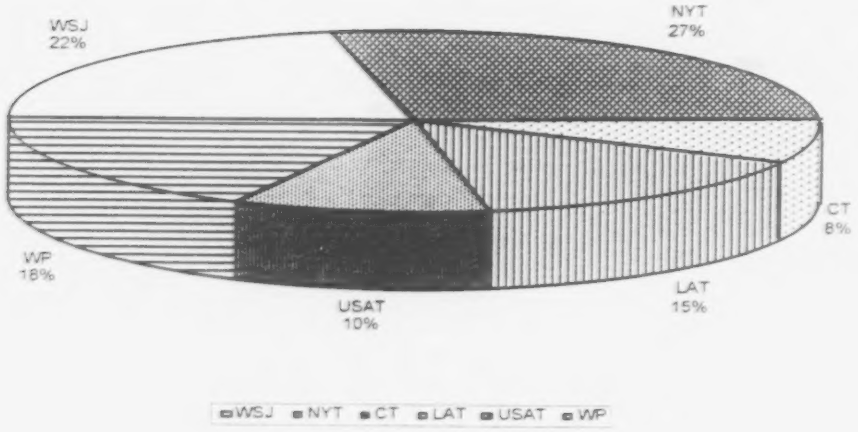
Aspect	Percentage
Impact on quantity and quality of jobs	63.5
Socioeconomic impacts (at macro level)	57.6
Trade and investment policies	54.7
Political implications (domestic and international)	36.0
Differential benefits/losses (geographical, sectoral, timely, etc.)	23.2
Operational issues of the accord (dispute-resolution mechanisms, accord's operational provisions)	21.2
Immigration issues	7.9
Other reasons	26.1

The Wall Street Journal and New York Times showed similar patterns: the majority of their stories were between 10 and 19 paragraphs long. Both had few stories longer than 30 paragraphs. The difference between these newspapers was that for the New York Times the second most common length was between 20 and 29 paragraphs, while the Wall Street Journal favored shorter stories (36.4 percent of this newspaper's stories had 9 or fewer paragraphs).

The Chicago Tribune and Los Angeles Times also showed similar patterns. Both papers favored longer stories. Respectively, 25.1 percent and 36.6 percent of these newspapers' stories were longer than 30 paragraphs. Some of the latter type of stories had more than 40 paragraphs. These articles were in depth analysis of the impact of NAFTA on these newspapers' states of origin. USA Today and Washington Post had different patterns altogether.

On the type of sources each paper relied on, the only significant result obtained (at a level of confidence of $p < .05$) was that New York Times, the Wall Street Journal and Los Angeles Times relied more on foreign sources than any of the other papers. The New York Times mentioned these sources in 36.8 percent of its stories, while the other two newspapers cited them in 22.8 percent and 21.0 percent of their stories respectively.

Figure 2. Distribution of the sample by newspaper



WSJ = Wall Street Journal
NYT = New York Times
CT = Chicago Tribune
LAT = Los Angeles Times
USAT = USA Today
WP = Washington Post

On the aspects of NAFTA considered in the stories, basically all the papers focused on the formal aspects of the agreement: the trade policies and the operational issues. Los Angeles Times, New York Times, USA Today, and Wall Street Journal mentioned trade and investment policies in more than 50 percent of their stories. Wall Street Journal, New York Times, Los Angeles Times and Washington Post focused on the dispute-resolution mechanisms, the side agreements clauses and other operational issues in more than 20 percent of their stories.

Table 4

Stories By Paper According To Length (Percentage of stories[a] and rank)

Newspaper	Length in paragraphs[b]			
	1 to 9	10 to 19	20 to 29	30 or more
Wall Street Journal				
percentage	36.4	56.8	4.5	2.3
rank	(2)	(1)	(3)	(4)
New York Times				
percentage	12.5	55.4	30.4	1.8
rank	(3)	(1)	(2)	(4)
Chicago Tribune				
percentage of stories	6.3	43.8	25.0	25.1
rank	(4)	(1)	(3)	(2)
Los Angeles Times				
percentage	3.9	46.7	26.7	36.6
rank	(4)	(1)	(3)	(2)
USA Today				
percentage	19.0	66.7	9.5	4.8
rank	(2)	(1)	(3)	(4)
Washington Post				
percentage	11.1	38.9	38.9	11.1
rank	(2)	(1)	(1)	(2)

[a] Percentages refer to the total of stories published by each newspaper

[b] $p < .00001$

Conclusions

The findings of the study coincide with previous results from sources studies obtained by Sigal (1973), Block (1989), Bennett (1990), and Dickson (1992). Indeed the NAFTA debate was indexed to certain sources, particularly administration officials and members of Congress. Nevertheless, regarding Sigal's and Dickson's contentions that these sources determined what was covered by the press, it is difficult to assess from the information available. The debate expanded through a long period, through different administrations (both in the United States and in Canada), and through several political campaigns. As the debate accommodated to new participants and new issues, the newspapers' coverage adjusted.

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However, at different moments, different sources outside of the administration, dictated the debate. This is the case of the period that extended from the formal signing of the original treaty in December, 1992 to August 1993. The Clinton administration maintained a low profile on NAFTA even though negotiations for the side agreements were taking place. At that time, the leading voices in the media were the opponents of NAFTA, particularly Ross Perot, labor union leaders, and some environmental and consumer organizations that brought a suit against the government demanding the elaboration of a complete environmental impact assessment study on the accord.

These findings agree with Cohen and Blecker's (1996) and Wiarda's (1994) contentions that the NAFTA debate was controlled at times by different agents. The official control of the debate was evident at the initial stages of the negotiation period, and at the end of the approval phase (when it mattered the most for the adoption of the treaty, anyway). In between these stages, as mentioned above, the control of the debate was in the hands of some of the members of the opposing coalition. Other sources, were marginalized from newspapers' coverage throughout the whole NAFTA process, most notably, public opinion.

The control of the debate did not necessarily guarantee success for the administration. As with many other bills in Congress, the administration negotiated votes, particularly among Democratic Congressmen. Unlike other bills, there was a generalized feeling that NAFTA required extensive doses of compromise, promises, and warranties from the White House. And all these were in response to the gridlock that characterized the approval phase.

The complexity of the debate was exemplified by the juxtaposition of economic and long-term benefit analysis, and short-run quantitative and qualitative impacts of NAFTA on American jobs. The latter reasons, as well as the environmental concerns, resonated in almost half of the American population who, by the time of the congressional vote, firmly opposed the treaty.

Aside from a group of organizations and individuals who argued for nationalist measures and more protectionism, there was a sort of consensus around the importance of free trade agreements as mechanisms for the United States to regain global economic leadership. The dissentions, at least those publicly admitted, dealt basically with the particular provisions of the accord.

As Wiarda (1994) pointed out, sometimes the debate on NAFTA was not even on NAFTA itself. The accord opened an opportunity to discuss a range of topics: human rights violations and the political system in Mexico; domestic political affairs, implications of economic globalization and the leverage of trading blocks on a nation's sovereignty and ability to handle domestic policies.

An interesting result of this study was the characterization of the coverage devoted by the six newspapers analyzed during each phase. As suggested by Schmitt (1995) and Block (1989) media coverage focused heavily on the "horse race" that was the approval period. Until the very last moments before the congressional decision, numerous vote-count stories were published in which all sides claimed victory. Prior to those moment, coverage highlighted some events related to NAFTA, but generally gave a traditional coverage, similar to other trade agreements covered in the past. After the implementation phase began in 1994, the media, debate participants, and the public in general were saturated with NAFTA. Coverage dropped significantly, becoming a sporadic topic in the news sections of mainstream newspapers, with the exceptions of the Wall Street Journal, Los Angeles Times and the Chicago Tribune, which continue to cover the accord regularly. New stories were based on accounts of other sources rather than administration officials.

Three proposed areas for further investigation are: First, an expansion of the study to consider other media, namely television and news magazines, whether specialized and/or general in scope. Another interesting topic to explore would be a replication of the study considering Canadian and Mexican newspapers, to analyze difference in coverage among the media of the three NAFTA partners.Finally, building from the preliminary results on the differences between nationally- and regionally-oriented newspapers, a deeper study could be conducted, analyzing possible variations on sources and issues considered in the debate.

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NOTES

[1] George Grayson (1995, p. 3).

[2] Rosenberg (1995).

[3] Neil Nevitte (1995, pp. 27-28).

[4] Kahane asserts that at least $25 million were spent by the Mexican government in its effort to secure approval of an agreement that almost all studies noted as favorable for Mexico.

[5] This coalition was formed by Ross Perot, Pat Buchanan, Ralph Nader and the Public Citizen organization -- a coalition of environmental, religious, human rights, and consumer groups --, Jerry Brown, Jesse Jackson and his Rainbow coalition, fresh produce growers, some industrial sectors, labor unions, some major environmental groups, and a majority of Democrats in Congress. The pro-NAFTA coalition was comprised of administration officials big and small businesses, grains producers, some environmental organizations which joined the supporting side almost at the end. Hispanics groups, and numerous academics and experts, as well as a majority of Republicans in Congress (Cohen and Blecker, 1996; Grayson, 1995; Wiarda, 1994).

[6] Considered as antidemocratic, authoritarian, corporatist (Wiarda, 1994, p.137).

[7] Cohen and Blecker (1996) and Wiarda (1994), pointed out that in general, the "rust belt" states were expected to be net losers of jobs, while the "sun belt" states were seen as the major winners in the agreement.

[8] Grayson (1995) reached a similar conclusion. He concluded that during the 1992 presidential elections, "The more press attention NAFTA received, the fewer people backed it and exit polls showed that the majority opposed NAFTA in Texas and Southern California, where Bush had particularly played up the agreement." (p. 127). At that moment, Americans were concerned about domestic affairs and the impact of the economic recession in their everyday lives. The fact that the agreement could mean job losses in the short run, notwithstanding its long-term benefits, generated a public disapproval of the accord.

[9] This means that more than 50 percent of the paragraphs in the articles were devoted to covering the agreement.

[10] The level of significance for these findings was $p< .0001$.

[11] The level of significance of these findings was $p < .03$.

[12] Significance levels of the three topics varied between $p < .00003$ for the impact on jobs, to $p <.01$ for trade and investment policies.

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Media Rights versus Community Interests in Canada and the United States: Explorations in Legislative and Judicial Balancing

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A paper presented to the Law Division of the Association for Educationin Journalism
and Mass Communication at the annual convention
in Chicago on July 31, 1997.

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Abstract

Media Rights versus Community Interests in Canada and the United States: Explorations in Legislative and Judicial Balancing

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Constitutional guarantees for press freedom in Canada and the United States, despite their similarities, differ in form and application. The First Amendment's negative proscription against government contrasts to the positive affirmation in Section 2(b) of the new Canadian Charter of Rights and Freedoms. While the American Bill of Rights makes no provision for legislative intervention, Sections 1 and 33 of the Canadian Charter provide for parliamentary authority to limit basic rights. This paper examines developments in five areas of media law in the two countries, compares approaches to legislative and judicial balancing, and examines the way courts in both countries interpret their respective constitutional provisions for press freedom by looking at themes in those judgments that appear to promote individual rights of the mass media on one hand, or community and societal interests on the other. It concludes that while the Canadian approach still provides for some "parliamentary supremacy" in these matters, it is essentially left to the courts in both countries to balance media rights against other societal interests.

Abstract of a paper presented to the Law Division of the Association for Education in Journalism and Mass Communication at the annual convention in Chicago on July 31, 1997.

Media Rights versus Community Interests in Canada and the United States: Explorations in Legislative and Judicial Balancing

At the same time that *The Washington Post* and *New York Times* were deciding whether to publish the Unibomber's manifesto in the fall of 1995, the Royal Canadian Mounted Police and local authorities were in the midst of a 31-day confrontation with an armed group of natives at Gustafsen Lake, British Columbia. CBC Radio interrupted its afternoon programming in British Columbia four times on September 13 with a brief message, broadcast in English and in the language of Shuswap Indians. The message was written by RCMP officials, who told CBC that it was what the renegades had demanded to hear. CBC senior management in Toronto endorsed the request by the RCMP to air the message, and defended their decision to accede to such demands "if the public interest is at stake."[1]

CBC's decision to cooperate with the RCMP during this confrontation was generally accepted in Canada as being the responsible thing to do. In fact, following the standoff, political columnist Jeffrey Simpson summarized the episode in a column in *The Globe and Mail* under the headline: "Thanks to RCMP, the Gustafsen Lake standoff ended quietly." The column made no mention of CBC's participation.[2]

Across the border, however, the decision by the *Post* and *Times* to publish the Unibomber's manifesto drew strong criticism from leading media professionals as being a serious violation of the canons of American journalism. William Serrin, in a special to *The Post,* complained that the newspapers had violated those canons by giving in to the government and by turning their news columns over to a killer.[3] Others, however, like commentator Daniel Schorr, agreed with the publishers that "This centers on the role of a newspaper as part of a community" and argued that the public increasingly views the press as shielding itself behind the First Amendment to exempt itself from its responsibilities to the broader community.[4]

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[1] Ross Howard, "Paper's action has Gustafsen Lake parallel," *The Globe and Mail.* September 20, 1995, A20.

[2] Jeffrey Simpson, *The Globe and Mail,* September 20, 1995, A14.

[3] William Serrin, "The Papers Submitted to Blackmail by a Killer," *The Washington Post.* September 24, 1995, C3.

Similarly, during the months of exhaustive coverage and commentary related to the O.J. Simpson trial in the United States, a trial court judge in Ontario issued a restraining order on the media in the Paul Bernardo murder trial that included, as well, a ban on publication of most information from his wife's trial several months earlier.[5] Canadian journalists complained but complied with the court order while American journalists in neighboring border cities did not, continuing what one U.S. newspaper editor had earlier referred to as a "border battle with Canadian law."[6]

These contrasting illustrations and Schorr's summary observation about the media's responsibilities to the broader community help frame the issues discussed in this paper by calling attention to: a) the relationship between media law and journalistic practice; b) the conflict between constitutional freedoms and civic responsibility; and c) the inherent conflict between the approaches of individualism and communitarianism.

This paper reports on one part of a larger project that deals with differences in Canada and the United States in perceptions of the role of the media in society and on issues related to the law and practice of journalism in the two countries. In particular, it examines the ways and the extent to which the law, the courts and the media in Canada tend either toward perspectives that favor the rights of individual journalists and media operations or that emphasize the values of community and the place of the media within the broader context of communities. It reviews differences in the legal and political traditions of both countries and compares the Canadian and American approaches to legislative and judicial balancing by examining developments in five specific areas of media law:

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[4] Daniel Schorr, "Printing Was a Tough But Conscionable Choice," *The Washington Post.* September 24, 1995, C3.

[5] For a review of these issues and the original ban in 1993 on publication of information from the trial of Karla Teale, Bernado's former wife, see Tammy Joe Evans, "Fair Trial vs. Free Speech: Canadian Publication Bans Versus the United States Media ," in *Southwestern Journal of Law & Trade in the Americas,* Vol. 2, 1995, at 203-225.

[6] Murray B. Light, "A dispatch from the border battle with Canadian Law." in Backtalk, a column published in *Presstime,* Vol. 16, No. 1, January 1994, at 47. At the time, Light was editor and senior vice president of *The Buffalo* (N.Y.) *News.* The newspaper's coverage of the murder trial conflicted with Canadian law.

public libel; false light privacy; journalist's privilege; media and the courts; and access to government information. It examines the way courts in Canada compare to those in the United States in their interpretations of these respective constitutional provisions for press freedom by looking at themes in those judgments that appear to promote individual rights of the mass media on one hand, or community and societal interests on the other.[7]

Differences in Constitutional Traditions

While the legal systems of Canada and the United States share a common tradition in English Common Law, their judicial and political approaches have been substantially different from the beginning. For example, the American Declaration of Independence and its commitment to "life, liberty and the pursuit of happiness" is contrasted to the British North America Act with its emphasis on the "peace, order and good government" of Canada. The role the courts in both countries have played in defining basic rights and freedoms has also differed considerably. The Supreme Court in the United States has played an activist role in defining these guarantees, particularly in the present century. However, until fifteen years ago, the Canadian Supreme Court dealt mainly with jurisdictional issues and played only a minor role in defining the meaning of these basic rights and freedoms in contemporary society. But the new Canadian Constitution, with its entrenched Charter of Rights and Freedoms, has considerably expanded the role of the courts in this regard. As Martin and Adam explain:

> "Canada's Constitution acquired some of the characteristics of the U.S. Constitution when the scope of judicial review was expanded so drastically. The Supreme Court of Canada began to exercise powers long held by the Supreme Court of the United States, this despite the fact that Canada purports to be a parliamentary democracy rather than a republic. Parliamentary democracies are marked by an acceptance of a basic constitutional rule that Parliament is supreme. The Canadian version of the principle, until 1982, was that Parliament was supreme in its domain and the provincial legislatures were supreme in theirs. From another

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[7] These are not either-or distinctions, certainly, and as Greenawalt explains, the ways in which courts and legislatures approach these issues are influenced by legal traditions and broader cultural considerations as well as the practicing philosophy of the country, which can be highly individualistic or that can tend to emphasize the place of persons within communities. See Kent Greenawalt, *Fighting Words: Individuals, Communities, and Liberties of Speech* (Princeton, N.J.: Princeton University Press, 1995), 7.

perspective, then, the Charter represents another step in the Americanization of our institutions."[8]

United States. The guarantees for freedom of expression in the United States are found in the speech-press clause of the First Amendment. The language is quite specific in stating that "Congress shall make no law . . . abridging freedom of speech, or of the press." In 1925, the Supreme Court extended this provision to apply to the states through the "due process" clause of the Fourteenth Amendment.[9] This firm proscription against government from interfering with the rights to free speech by the press and public is quite different from the more positive provision in the Canadian Charter of Rights and Freedoms which, in Section 2(b), provides that everyone "has the fundamental freedoms of thought, belief, opinion and expression, including freedom of the press and other media of communication."

In the United States, court interpretations have largely held in favor of promoting individual rights, both of citizens and of the press, against directly promoting interests of community or the broader societal good. At one extreme, the argument is made that the First Amendment was intended as a proscription against government in matters of free expression, including freedom of the press, and nowhere does it say the press must be responsible. Others argue that the broader societal interests are advanced by protecting these rights essential to the workings of a free democratic society. At the other extreme are those who argue that the speech-press clause requires an *ad hod balancing of interests*. Supreme Court Justice Brennan went so far as to advocate a "two-tiered" approach to the First Amendment allowing for the application of a more absolutist "speech model" in some instances and a "structural model" in others when a balance of freedoms is more appropriate.[10]

Canada. In Canada, constitutional guarantees for freedom of expression are found in Section 2(b) of the Canadian Charter of Rights and Freedoms, which states that: "Everyone has the following fundamental freedoms: . . . (b) freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication." In addition, provisions of this positive affirmation in Section 2(b) are qualified in a manner that supports the broader community or societal interests through Section 1, which guarantees these freedoms but "subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society." According to Martin and Adam in their *Sourcebook of Canadian Median Law*, this substantially expanded the scope of judicial review in Canada by conferring on the courts "the additional and extraordinary power to examine whether contested legislation conforms to the values and declarations in the Charter."[11] Before that, the courts dealt mainly with questions of jurisdiction between the provinces and the federal government. Community interests in Canada are further accommodated in Section 33(1) of the Charter by allowing Federal Parliament or provincial legislatures to pass laws in compliance with Section 1 *notwithstanding* the protections of Section 2 or Sections 7-15 of the Charter. (Section 2 provides for fundamental freedoms of religion, speech, press, assembly and association while Sections 7-15 enumerate various legal and equality rights such as life, liberty and security of person, search or seizure and proceedings in criminal and penal matters).

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[8] Robert Martin and G. Stuart Adam, *A Sourcebook of Canadian Media Law. Second Edition* (Ottawa: Carleton University Press, 1994) at 72.

[9] *Gitlow v. New York*, 268 U.S. 652 (1925).

[10] William J. Brennan, Jr., "The Symbiosis Between the Press and the Court," *The National Law Journal* 2, no. 2, (October 29, 1979).

Given these different provisions for protecting speech and press rights in the United States and Canada, the first part of this paper examines ways in which court interpretations of these provisions have advanced or inhibited individualism and individual rights on one hand and community or broader societal interests on the other

Legislative and Judicial Balancing

The Role for Parliaments in the Canadian Charter

The entrenchment of a "free press" clause in the Charter of Rights and Freedoms gives courts more authority and thus more responsibility for defining the limits of media rights in

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[11] Martin and Adam, *supra* note 8, at 71.

Canada.[12] However, several important provisions in the Charter give legislative bodies, both federal and provincial, authority to define the scope of these and other fundamental rights and freedoms specified in Sections 2-15. The first is the "application provision" in Section 32, which applies the Charter to the Parliament and government of Canada in respect to all matters within Parliament's authority and to provincial legislatures and governments in respect to all matters within the legislative authority of each province. This legislative authority is limited in Section 24(1) to the extent that individuals are granted standing to apply to a court for an appropriate remedy by when they feel their rights or freedoms have been infringed or denied. More specifically, Sections 1 and 33(1) define the role of federal and provincial governments in balancing these fundamental rights against the broader needs and interests of society. Section 1 guarantees the rights and freedoms set out in the Charter "subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society." Section 33(1) allows Federal Parliament and provincial legislatures to pass laws that "shall operate notwithstanding a provision included in section 2 or sections 7 to 15" of the Charter.

The Charter and Section 1. The language of this provision requires that any legislative matter limiting the basic rights and freedoms guaranteed in the Charter must satisfy three general requirements. First, it must be a reasonable limit on the right or freedom being affected. Second, it must be demonstrably justifiable. And third, it must reflect the values of a free and democratic society.[13] Lepofsky lists four questions a court must ask when considering if an infringement on free expression is justified under Section 1: 1) Is the action of such pressing and substantial importance as to justify restricting free speech? 2) Does it achieve or promote its purpose? 3) Is this the option for achieving its objectives that impairs free speech as little as reasonably possible? and 4) Are the objectives proportional to their effects?[14]

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[12] Michael G. Crawford, *The Journalist's Legal Guide*, Second Edition (Toronto: Carswell, 1990) at 2.

[13] Philip Anisman, "Application of the Charter: A Structural Approach," in Philip Anisman and Allen M. Linden, eds., *The Media, The Courts and The Charter* (Toronto: Carswell, 1986) at 21. See also David M. Lepofsky, "Open Justice 1990: The Constitutional Right to Attend and Report on Court Proceedings in Canada," in David Schneiderman, ed., *Freedom of Expression and The Charter* (Scarborough, Ont.: Thomson Professional Publishing Canada, 1991) at 184. Here Lepofsky identifies four requirements for a contravention of basic rights to merit sec. 1 protection: First, it must be prescribed by law. Second, it must amount to a limit on a particular constitutional right, but may not be a wholesale nullification of that right. Third, it must have been undertaken to achieve an identifiable social policy objective justified in a free and democratic society. And fourth, it must incorporate a means to achieve this reasonable objective.

In 1986 the Supreme Court of Canada identified two central criteria that must be satisfied in order to establish that a limit is allowable under Section 1. First, the objective must be "of sufficient importance to warrant overriding a constitutionally protected right or freedom." Second, once such an objective is recognized, "the party invoking s. 1 must show that the means chosen are reasonable and demonstrably justified."[15] The Court elaborated on this second criterion in *R. v. Whyte* by explaining that a "proportionality test" must be met to show that the measures are reasonable and demonstrably justified.[16] The three parts of this test are:

> 1) The measures must be carefully designed to achieve the objective of the legislation, with a rational connection to the objective;
> 2) The measure should impair the right or freedom as little as possible; and
> 3) The must be proportionality between the effects of the impugned measures on the protected right and the attainment of the objective.[17]

The Court applied these rules to two cases directly involving freedom of expression under Section 2(b) of the Charter and ruled in one that an Alberta law prohibiting publication of certain materials from court proceedings was not justifiable under Section 1.[18] In the other, the Court ruled that an injunction restraining picketing and other activities calculated to interfere with the operations the court was justified by Section 1 of the Charter.[19] This decision caused one analyst to conclude that the court, in this decision, displaced and relegated the *Charter's* guarantee of freedom of expression to a constitutionally inferior position *vis-à-vis* other constitutional rights.[20]

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[14] M. David Lepofsky, "Toward a Purposive Approach to Freedom of Expression and Its Limitations," in Frank E. McArdle, ed., *The Cambridge Lectures 1989* (Montreal: Les Editions Yvon Blais, 1990) at 5-6.

[15] *R. v. Oakes*, [1986] 1 S.C.R. 103, at 138-139, referring to *R. v. Big M Drug Mart Ltd.* In separate cases, the Supreme Court twice ruled that certain provisions of Quebec's Bill 101, *The Charter of the French Language*, exceeded the limits of and were not justified under Section 1. See *A.G. (Que.) v. Quebec Protestant School Boards*, [1984] 2 S.C.R. 66 and *Ford v. Quebec (A.G.)*, [1988] 2 S.C.R. 712.

[16] [1988] 2 S.C.R. 3, at 20.

[17] Ibid.

[18] *Edmonton Journal v. Alta (A.G.)*, [1989] 2 S.C.R. 1326.

[19] *B.C.G.E.U. v. British Columbia (A.G.)*, [1988] 2 S.C.R. 214. The Court reached this conclusion even though the lower court record included an affidavit from a member of the Law Society of British Columbia explaining that the "picket line was orderly and peaceful" and that "Persons appearing to have business inside the Courthouse entered and left the building at will and at no time appeared to be impeded in any way by the picketers." At 221.

[20] D. Schneiderman, *supra* note 12, at xxiv.

In the *Dolphin Delivery* case two years earlier, the Supreme Court recognized picketing as a constitutionally protected form of expression.[21]

Legislatures and Section 33. This section, which allows the federal and provincial governments to pass laws that "shall operate notwithstanding a provision included in section 2 or sections 7 to 15" of the Charter, offers a balance between judicial and legislative supremacy under the Charter.[22] Given the history of parliamentary supremacy in Canada, the language of this section seems to leave the last word to the legislatures while not indicating whether legislative action under this section is beyond judicial review. This power not only strengthens the community interests, but it constitutes the re-expression of the hoary doctrine that Parliament is sovereign in its domain and the Legislatures are sovereign in theirs. The major case testing the strength of this provision dealt with an act by the parliament of Quebec declaring that the rights and freedoms of the Charter do not apply to any legislation in Quebec.[23] Here, Superior Court Judge Deschênes identified four conditions of form imposed by Section 33 of the Charter: a) an express declaration; b) concerning an Act therein described; c) with respect to a given provision of ss. 2 or 7 to 15 of the Charter; and d) for a specified period.[24] Applying these conditions, he ruled that the Quebec legislature acted within the provisions of Section 33.

Judicial Balancing in the United States

Despite the absolutist language of the First Amendment ("Congress shall make no law..."), few justices or legal scholars have taken a firm absolutist position in defining the limits of protected speech.[25] Justice Holmes, in fashioning his "clear and present danger" doctrine and arguing for the fullest possible protection for free expression, explained however that "The most stringent protection of free speech would not protect a man in falsely shouting fire in a theatre and causing a panic."[26] He further argued that determining whether an act constitutes a "clear and present danger" is clearly a judicial responsibility, not a legislative one.[27]

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[21] *R.W.D.S.U., Loc. 580 v. Dolphin Delivery Ltd.*, [1986] 2 S.C.R. 573 [B.C.].

[22] Anisman, *supra* note 13, at 5.

[23] *Alliance des Professeurs de Montréal v. A.-G. Que.*, 5 D.L.R. (4th) 157 [1984].

[24] Id. at 164. Concerning the fourth condition, s. 33(3) provides that "A declaration made under subsection (1) shall cease to have effect vie years after it comes into force or on such earlier date as may be specified in the declaration."

[25] One notable exception would be Justice Hugo Black. In a public interview with Professor Edmond Cahn, he explained: "I believe when our Founding Fathers, with their wisdom and patriotism, wrote this Amendment, they knew what they were talking about. They knew what history was behind them and they wanted to ordain in this country that Congress, elected by the people, should not tell the people what religion they should have or what they should believe or say or publish, and that is about it. It says 'no law,' and that is what I believe it means." In Edmond Cahn, *Justice Black and First Amendment "Absolutes": A Public Interview*, 37 N.Y.U.L. Rev. 549 at 554

Two Tracks or Two Models. In attempting to clarify the poles of the debate between those arguing that First Amendment rights are absolute and those advocating a balancing of competing interests, Laurence Tribe provided useful context by offering a two-track approach for understanding the issues. In track one, "the absolutists essentially prevail" while in track two "the balancers are by and large victorious."[28]

Justice Brennan adapted this approach to media issues and the free press clause of the First Amendment in a 1979 speech at Rutgers University.[29] His two "tiers" or "tracks" take the form of "two distinct models of the role of the press in our society that claim the protection of the First Amendment."[30] The first, the "speech" model, protects the acts of speaking, publishing or broadcasting and "readily lends itself to the heady rhetoric of absolutism." This model fosters the values of democratic self-government.[31] The second model, the "structural" model, protects the press "when it performs all the myriad tasks necessary for it to gather and disseminate the news. Under this model, Brennan explained, "the court must weigh the effects of the imposition inhibiting press access against the social interests served by the imposition."[32] Justice Brennan felt

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(1962). Cited in Everett E. Dennis, Donald M. Gillmor and David L. Grey, *Justice Black and the First Amendment: "'no law' means no law"* (Ames: Iowa State University Press, 1978). See also Harry Kalven, Jr., "Upon Rereading Mr. Justice Black on the First Amendment," 14 U.C.L.A. Law Review 428 (1967).

[26] *Schenck v. U.S.*, 249 U.S. 47, at 52 (1919).

[27] Ibid. "When a nation is at war many things that might be said in a time of peace are such a hindrance to its effort . . . that *no Court could regard them as protected by any constitutional right.*" [emphasis added]. For a more complete discussion of Justice Holmes' views on this point, see: "Holmes and the Judicial Role," Chapter 6 in Jeremy Cohen, *Congress Shall Make No Law: Oliver Wendell Holmes, the First Amendment, and Judicial Decision Making* (Ames: Iowa State University Press, 1989).

[28] Laurence H. Tribe, *American Constitutional Law*, Second Edition, (Mineola, NY: The Foundation Press, Inc., 1988) at 792.

[29] W. J. Brennan, Jr., *supra* note 10.

[30] Ibid.

[31] Ibid. At this point in his speech, Justice Brennan quotes Professor Zechariah Chafee: "[t]he First Amendment protects . . . a social interest in the attainment of truth, so that the country may not only adopt the wisest course of action but carry it out in the wisest way." Free Speech in the United States 33 (1946)."

[32] Ibid.

compelled to offer this clarification in response to considerable press criticism over several recent Supreme Court decisions. In particular, he focused on *Branzburg v. Hayes,*[33] where the Court failed to provide reporters with a constitutional privilege from having to testify; *Zurcher v. Stanford Daily,*[34] where the Court upheld a third-party search of a campus newspaper's newsroom, and *Herbert v. Lando,*[35] where the Court required a media libel defendant to answer questions about his state of mind during the editorial process. These activities, Justice Brennan explained, are among "the myriad tasks necessary for [the press] to gather and disseminate the news."[36] They come under the "structural" model and are deserving of qualified protection when balanced against other rights and needs. They must be distinguished from the more specific acts of publishing, included under the "speech" model, which are deserving of more absolute protection under the First Amendment.

The following section reviews supreme court judgments in both countries under what Justice Brennan would consider the more absolutist "speech" model. It is followed by sections that review five important areas of media law (public libel, false light privacy, journalist's privilege, media and the courts, and access to information) to determine how the courts in the United States and Canada have balanced constitutional protections for the media in these areas against broader interests of government, the courts and society.

Freedom to Publish

Despite the fact that "freedom of the press" was not formally part of any constitutional document in Canada prior to the *Charter of Rights and Freedoms* in 1982, both Canada and the United States have landmark decisions issued earlier in this century expressing a strong commitment to the principle of a free press.

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[33] 408 U.S. 665 (1972).
[34] 436 U.S. 547 (1978).
[35] 441 U.S. 153 (1979).
[36] Brennan, *supra* note 10.

In the United States, of course, the Court's 1931 decision in *Near v. Minnesota*[37] still serves as guiding precedent in cases involving prior restraint by government.[38] Twenty-five years ago in the famous *Pentagon Papers* case,[39] the Supreme Court reaffirmed the principles of *Near* and explained that the government "carries a heavy burden of showing justification" for the enforcement of any restraints on the press.[40] Later, in *Nebraska Press Association v. Stuart*, a case involving an unconstitutional judicial prior restraint, the Court explained that "prior restraints on speech and publication are the most serious and the least tolerable infringement on First Amendment rights."[41]

In Canada, the landmark pre-Charter decision concerning freedom of the press is the *Alberta Press* case[42] decided in 1938, well in advance of even the original Canadian Bill of Rights in 1961. The case involved a bill introduced in the Alberta legislature requiring newspapers to disclose their sources of information and to print government statements to correct previous articles. Since, at that time, there was no constitutional guarantee of freedom of the press, the Court ruled not on the constitutionality of the so-called "Press Bill" but that the Alberta parliament did not have legislative jurisdiction.[43] Nevertheless, the Court issued a strong statement in support of free press guarantees: "Freedom of discussion is essential to enlighten public opinion in a democratic State; it cannot be curtailed without affecting the right of the people to be informed through sources independent of the Government concerning matters of public interest. There must an untrammeled publication of the news and political opinions of the political parties contending for ascendancy."[44] Other pre-Charter decisions involving freedom of expression did not deal directly with the press but served to reaffirm the Court's view concerning the fundamental importance of informed public discussion free from interference by government.[45]

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[37] 283 U.S. 697 (1931).

[38] *Near* reaffirmed an important constitutional principle from a case six years earlier when the Supreme Court applied the First Amendment to the states through the due process clause of the Fourteenth Amendment. *Gitlow v. New York*, 268 U.S. 652.

[39] *New York Times v. United States*, 403 U.S. 713 (1971). See also *Organization for a Better Austin v. Keefe*, 402 U.S. 415 (1971), decided six weeks before *Pentagon Papers* where the Supreme Court reaffirmed that "Any prior restraint on expression comes to this Court with a 'heavy presumption against its constitutional validity.'" At 419.

[40] Ibid.

[41] *Nebraska Press Assn. v. Stuart*, 427 U.S. 539 at 559. This was "the thread running through all these cases," referring to *Near v. Minnesota, Bantam Books, Inc. v. Sullivan, Organization for a Better Austin v. Keefe* and *New York Times v. U.S.*

[42] *Reference re Alberta Statutes*, [1938] S.C.R. 100 (S.C.C.).

[43] Clare Beckton, "Freedom of the Press in Canada: Prior Restraints," in P. Anisman and A. M. Linden, eds., *supra* note 13, at 119.

One important area of media law where the supreme courts of Canada and the United States have taken different positions has to do with the publication of truthful information, lawfully obtained. In the United States, the Supreme Court has ruled in several cases that rules prohibiting publication or attempts to punish the press for publishing such information are unconstitutional while rules against the release of such information is not.[46] In Canada, however, the Supreme Court took a different position in *Canadian Newspapers Co. v. Canada (A. G.).*[47] The case dealt with Section 442(3) of the *Criminal Code*, which permits the presiding judge in a sexual offense case to issue an order prohibiting the publication or broadcast of any information that could disclose the identity of the complainant. The Court ruled that such an order, limited to instances where the complainant or prosecutor requests it or the court considers it necessary, is justifiable under Section 1 of the *Charter* since the legislative objective of protecting the identity of the victim in such cases outweighs the media's rights under s. 2(b) of the *Charter.*[48]

A more recent issue involving governmental prior restraint has to do with an amendment in the *Canada Elections Act* of 1993 that bans the publication of public opinion polls within the last 72 hours of a campaign.[49] While the Supreme Court has not been asked to rule on the constitutionality of such a ban, a bill in 1983 "of similar approach and identical purpose" was ruled unconstitutional by the Alberta Court of Queen's Bench.[50] The current legislation also makes it an offense for the media to report how the parties stand in opinion polls in the last three days of the campaign.

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[44] Alberta Press Case, *supra* note 42.

[45] See *Saumur v. City of Quebec*, [1953] 2 S.C.R. 299 (S.C.C.), a Jehovah's Witness case similar to the 1938 case of *Lovell v. Griffin* in the United States (303 U.S. 444); *Switzman v. Elbling*, [1957] S.C.R. 285 (S.C.C.), "the Quebec padlock case"; and *Boucher v. The King*, [1951] S.C.R. 265 (S.C.C.).

[46] See *Cox Broadcasting Corp. v Cohn*, 420 U.S. 469 (1975), the state cannot punish the media for disseminating the name of a rape victim acquired from a document introduced during trial; *Oklahoma Publishing Co. v. District Court*, 430 U.S. 308 (1977), the press cannot be stopped from publishing information when reporters are allowed to attend a juvenile court proceeding; *Smith v. Daily Mail Publishing Co.*, 443 U.S. 97 (1979), the state cannot punish the press for publishing the name of a juvenile offender acquired from police sources; and *Florida Star v. B.J.F.*, 491 U.S. 524 (1989), a newspaper cannot be punished for publishing the name of a rape victim released y the sheriff's department.

[47] [1988] 2 S.C.R. 122.

[48] Id. at 124.

[49] See J. Andrew Fraser, "The Blackout of Opinion Polls: An Assault on Popular Sovereignty," 4 *Media and Communications Law Review* (1993-95), at 365-403, citing R.S.C. 1985, c E-2 and explaining at 365 that "The amendments came via Bill C-114, *An Act to Amend the Canada Elections Act*, 3d Sess., 34th Parl., 1993 (S.C. 1993, c. 19)."

The "Public" Law of Libel

United States. The Supreme Court constitutionalized a major part of defamation law in the United States and established what has come to be known as "the public law of libel" in 1964 in its landmark decision in *New York Times Co. v. Sullivan.*[51] The Court ruled that the principle of "strict liability" would not apply to elected public officials seeking to recover damages for civil libel. Instead, they would have to meet a new national, uniform standard of fault by having to prove "actual malice", which Justice Brennan defined as publication "with knowledge that it was false or with reckless disregard of whether it was false or not."[52] He went on to explain:

> "Thus we consider this case against the background of a profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open, and that it may well include vehement, caustic, and sometimes unpleasantly sharp attacks on government and public officials."[53]

The Court later applied this rule to appointed public officials[54] and to public figures.[55] In 1971 it abandoned the distinction between public and private persons and extended this requirement to all libel plaintiffs if the issue they were involved in was a public issue or involved matters of public interest.[56] Three years later, however, it returned to the distinction between private and public person plaintiffs in libel action but required that private persons meet a lesser standard of negligence unless they wished to collect punitive damages, which would require proving actual malice.[57] In addition, all plaintiffs involved in matters of public concern must now prove the falsity of the defamatory remarks as well as fault. This has been the case for public officials and public figures since *New York Times v. Sullivan,* and now applies to private-person plaintiffs since the Supreme Court's 1986 ruling in *Philadelphia Newspapers, Inc. v Hepps.*[58]

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[50] "The gag slips quietly into place," *The Globe and Mail*, May 18, 1993, A22.

[51] 376 U.S. 254 (1964).

[52] Id. at 280.

[53] Id. at 270.

[54] *Rosenblatt v. Baer*, 383 U.S. 75 (1966).

[55] *Curtis Publishing Co. v Butts* and *Associated Press v. Walker*, 388 U.S. 130 (1967).

[56] *Rosenbloom v. Metromedia*, 403 U.S. 29 (1971). Justice Brennan explained at 43: "If a matter is a subject of public or general interest, it cannot suddenly become less so merely because a private individual is involved, or because in some sense the individual did not 'voluntarily' choose to become involved. The public's primary interest

Before *New York Times v. Sullivan,* the Supreme Court had considered defamatory publication to be outside protection of the First Amendment.[59] Five years earlier, in *Roth v. United States,*[60] the Court specifically ruled that some expression, including obscenity, was unprotected, which gave new significance to the concept of a two-tiered theory of the First Amendment.[61] Establishment of the *New York Times* rule, with its later refinements and applications, provided considerable constitutional protection under libel law to the media and to other "citizen-critics" of government engaged in public speech and in the debate of public issues, which should be "uninhibited, robust, and wide-open." Outside that protection, in the second tier, was defamation of private persons and "calculated falsehood" involving public officials and other public person plaintiffs.[62]

Canada. The basic elements of civil libel in Canada are similar to those of libel law in the United States, which is understandable, of course, since the two countries share the same English common law traditions. The exception in Canada is the province of Quebec, which operates under its own Civil Code. As in the United States, some variation of the elements of defamation, identification and publication are required for a suit to be actionable. But just as there are differences in these requirements from state to state, variations also exist from province to

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is in the event; the public focus is on the conduct of the participant and the content, effect, and significance of the conduct, not the participant's prior anonymity or notoriety."

[57] *Gertz v. Robert Welch,* 418 U.S. 323 (1974).

[58] 475 U.S. 767 (1986).

[59] See *Chaplinsky v. New Hampshire,* 315 U.S. 568, 572 (1942) and *Beauharnais v. Illinois,* 343 U.S. 250, 266 (1952).

[60] 354 U.S. 476 (1957).

[61] Jerome A. Barron, and C. Thomas Dienes, *Handbook of Free Speech and Free Press* (Boston: Little, Brown and Company, 1979) at 222.

[62] The burden for proving this falsity, however, falls on the plaintiff. See *Philadelphia Newspapers v. Hepps,* 475 U.S. 767 (1986).

province. For example, in Canada truth is a complete defense in all provinces except Quebec, where truth must be in the public interest and without malice. Other differences in libel law exist within and between the two countries in terms of defenses allowed, standards of proof, proof of falsity, and the like. And some observers conclude that in Canada protection of reputation is valued more than is freedom of speech.[63]

The main difference in libel law between the United States and Canada, however, is in the application of a uniform, national fault standard, particularly for public officials. Canadian courts have never adopted the American approach described above as the "public law of libel."[64] In a recent case, *Hill v. Church of Scientology*,[65] the Supreme Court of Canada was asked in arguments by the appellants to adopt the actual malice rule from the United States, but the Court declined. Justice Cory, writing for the majority, reviewed the development of this standard in the United States, including critiques of the actual malice rule, and explained how the courts in England and Australia had refused to adopt it.[66] He concluded that "None of the factors which prompted the United States Supreme Court to rewrite the law of defamation in America are present in the case at bar.[67] His conclusion was that "the common law of defamation complies with the underlying values of the *Charter* and there is no need to amend or alter it."[68] Earlier in his opinion, he refused to separate an individual's public and private rights to recover damage to reputation.

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[63] Lewis N. Klar, "If You Don't Have Anything Good To Say About Someone . . ." in D. Schneiderman, ed., *supra* note 12, at 261. Concerning Klar's conclusion that protection of reputation is valued more in Canada than is free speech, Stuart Adam, in a personal communication (5 April 97) observes: "That seems like a Hugo Black kind of comment which forecloses on any rational discussion of justifiable limits. The recognition of an interest in reputation may deserve less weight than it gets in common and statutory law. But limiting freedom of expression does not necessarily entail shutting it down. the law of civil defamation circumscribes and limits freedom of expression just as limitations in American law do. Furthermore, the common law defences of truth, fair comment, and qualified privilege each constitute the expression of a value for free speech in a law that limits it."

[64] See Thomas A., Hughes, "The Actual Malice Rule: Why Canada Rejected the American Approach to Libel." Paper presented at the annual convention of the Association for Education in Journalism and Mass Communication, Anaheim, California, August 1996.

[65] [1995] 2 S.C.R. 1130.

[66] Id., at 1180 to 1187.

[67] Id., at 1188. He went on to explain that this case does not involve the media or political commentary about government policies, that a review of jury verdicts in Canada reveals that there is no danger of numerous large awards threatening the viability of media organizations, and that in Canada there is no broad privilege accorded to the public statements of government officials which needs to be counterbalanced by a similar right for private individuals.

[68] Ibid.

> The fact that persons are employed by the government does not mean that their reputation is automatically divided into two parts, one related to their personal life and the other to their employment status. To accept the appellants' position would mean that identical defamatory comments would be subject to two different laws, one applicable to government employees, the other to the rest of society. Government employment cannot be a basis for such a distinction. Reputation is an integral and fundamentally important aspect of every individual. It exists for everyone quite apart from employment.[69]

In the end, by continuing intact the English common law tradition in civil defamation, the Canadian Supreme Court keeps Canada more in line with other Western democracies, which set themselves apart from the American tradition that grants considerable protection to the news media to comment on government and criticize public officials and public figures with less fear of being successfully challenged under libel law.

False Light Privacy

United States. The Supreme Court combined parts of libel and privacy law in the United States by establishing the requirement that plaintiffs presented in a false manner by the media must meet a certain standard of fault to collect damages under privacy law.[70] This branch of the tort of privacy is, as one writer put it, a combination of weak defamation and weak privacy.[71] While the plaintiff is presented in a false manner, it is not serious enough to cause damage to reputation and be actionable under libel law. And if the presentation is true, it is not sufficient to cause injury under the embarrassing private facts branch of privacy law.

In *Time Inc. v. Hill,*[72] Justice Brennan extended the *New York Times v. Sullivan* rule to require the victim of a hostage-taking to show that his portrayal in a false manner by the media defendant was done deliberately or with reckless falsity. In another key case, *Cantrell v. Forest*

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[69] Id. at 1161.

[70] Putting the Plaintiff in a False Light: One who gives publicity to a matter concerning another that places the other before the public in a false light is subject to liability to the other for invasion of his privacy if (a) the false light in which the other was placed would be highly offensive to a reasonable person, and (b) the actor had knowledge of or acted in reckless disregard as to the falsity of the publicized matte and the false light in which the other would be placed." See Stuart M. Speiser, Charles F. Krause and Alfred W. Gans, *The American Law of Torts*, Volume 8. (New York: Clark, Boardman, Callaghan, 1991).

[71] Marc Franklin, "An Introduction to American Press Law" in P. Anisman and A. M. Linden, eds., *supra* note 13, at 87.

City Publishing Co.,[73] the court extended the same requirement to the private person survivor of an accident victim. The extent to which these developments parallel those in the public law of libel is not clear,[74] mainly on the question of whether private-person plaintiffs in a false light privacy suit can meet a lesser fault standard of negligence, for example, or whether they must establish that their portrayal in a false light was done with knowledge or reckless disregard (the *Sullivan* rule).

Canada. False light privacy with its requirements for fault is a uniquely American judicial development. Nothing quite like it exists in Canadian law. Section 181 of the Criminal Code makes it an offense to knowingly publish false news which causes or is likely to cause injury or mischief to a public interest.[75] Several of the provinces have some form of statutory protection for invasion of privacy.[76] British Columbia, Manitoba and Saskatchewan, for example, have similar laws making it a tort, actionable without having to prove damage, to invade another person's privacy willfully and without claim of right. In Quebec, the plaintiff must prove fault, damage, and a causal link between the fault of the defendant and the damage suffered. These laws, however, deal mainly with the more traditional areas of privacy, including intrusion and trespass. Any action for damages resulting from a false light portrayal would have to be sought under defamation law which, in Canada, still applies the common law principle of strict liability.

Journalist's Privilege

Courts in both Canada and the United States have been unwilling to grant to journalists the same common law privilege from having to testify as is granted for doctor-patient, lawyer-client and priest-penitent communications. In both countries, the general rule is that journalists will not be offered absolute protection from having to disclose the identity of a source or confidential

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[72] 385 U.S. 374 (1967).

[73] 419 U.S. 245 (1974).

[74] See J. A. Barron and C. T. Dienes, *supra* note 60, at 380-384.

[75] M. G. Crawford, *supra* note 12, at 275. Crawford also notes that the Broadcasting Act makes it an offense to spread false or misleading news, citing *Radio Regulations, 1986*, SOR/86-982, s. 5(1) and *Television Broadcasting Regulations*, SOR/87-49, s. 5(1).

[76] Id., at 94-106.

information if it is considered relevant and necessary. There are differences, however, in the constitutional and statutory considerations between the two legal systems.

United States. A constitutional or federal common law privilege for journalists from having to reveal confidential sources or materials has been recognized by all but one of the federal courts of appeal, and similar protections have been established under either state constitutional or statutory law in all but six states.[77] The Supreme Court's 1972 decision in *Branzburg v. Hayes,*[78] dealt specifically with the application of a First Amendment privilege for journalists from having to testify when confidential sources or information is involved. While the Court failed in this case to extend such constitutional protections, the split vote (4-1-4) and the lengthy majority opinion by Justice White left open the door for state and federal courts to find some degree of privilege under the First Amendment. The swing vote and short opinion by Justice Powell, who agreed with much of what was included in the opinions on both side, agreed that there were times when such a constitutional shield would be allowed if a legitimate First Amendment interest was involved. Most significant was the dissenting opinion by Justice Stewart who offered a four-part test that is used in state and federal courts in applying federal or state common law protection or statutory protection under a state "shield" law. The test requires:

> 1) Probable cause to believe the journalist has relevant information;
> 2) The information sought cannot be obtained in another way less injurious of the First Amendment; and
> 3) There is a compelling and overriding interest in the information.[79]

The only other Supreme Court decision directly involving journalist's privilege since *Branzburg v. Hayes* is *Cohen v. Cowles Media Co.,*[80] but this case was about the legal consequences of the news media breaking a promise of confidentiality, not the protection of source identities.[81]

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[77] Donald M. Gillmor, Jerome A. Barron, Todd F. Simon and Herbert A. Terry, *Fundamentals of Mass Communication Law* (Minneapolis/St. Paul, Mn.: West Publishing Co., 1996) at 125 and 131-132.

[78] 408 U.S. 665 (1972).

[79] Id., at 743.

[80] 501 U.S. 663.

[81] Gillmor, et. al., *supra* note 76, at 130.

Canada. The issue of journalist privilege had not been dealt with by the Supreme Court of Canada until 1989, when it decided a case similar in many ways to *Branzburg v. Hayes* in the U.S. *Moysa v. Alberta (Labour Relations Board)*[82] involved a reporter for the *Edmonton Journal* who refused to identify her sources of information, claiming confidential privilege protection under common law and the Canadian Charter. The Court affirmed the decision of the two lower courts that the reporter in this case had no special privilege to refuse to testify before the labour board. While the Court did not feel compelled by the facts of the case to address the "broad and important constitutional questions" before it, Justice Sopinka in his opinion for the majority did refer to an earlier pre-Charter decision[83] when the Court acknowledged the four criteria cited by Wigmore for when a privilege for confidential privilege should be granted.[84] It is likely that the Wigmore test will play an important role when and if the Court is presented with the right case requiring a consideration of the constitutional questions not addressed in *Moysa*. However, from Justice Sopinka's opinion, the news media appellant can expect to have to establish with evidence that a direct link exists "between testimonial compulsion and a 'drying-up' of news sources."[85]

The Issue of Newsroom Searches. Journalists in both Canada and the United States have had to deal with unfavorable high court decisions upholding the constitutionality of third-party newsroom searches. In the United States in *Zurcher v. The Stanford Daily*,[86] the Supreme Court ruled that a warrant authorizing the search of a newspaper's newsroom (a third-party or innocent-party search) to find evidence to help authorities identify individuals being sought for unlawful activity was not an unconstitutional violation of the newspaper's First Amendment rights.

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[82] [1989] 1 S.C.R. 1572.

[83] *Slavutych v. Baker*, (1975), 55 D.L.R. (3d) 224 (S.C.C.)

[84] Wigmore's four criteria are: 1) The communications must originate in a confidence that they will not be disclosed; 2) This element of confidentiality must be essential to the full and satisfactory maintenance of the relation between the parties; 3) The relations must be one which in the opinion of the community ought to be sedulously fostered; and 4) The injury that would inure to the relation by the disclosure of the communications must be greater than the benefit thereby gained for the correct disposal of litigation. From Crawford, *supra* note 12, at 68-69, citing *Wigmore On Evidence*, 3rd ed., (McNaughton Revision, (1961), para. 2285.

[85] *Moysa*, *supra* note 81, at 1581.

[86] 436 U.S. 547 (1978).

The result was passage several years later of the Federal Newsroom Search Bill that prohibited such searches except in the most extreme circumstances.[87]

A year before the *Stanford Daily* decision, a British Columbia court quashed a search warrant authorizing federal officials to search the offices of a newspaper for information about individuals whose picketing activities had interfered with and inquiry.[88] The Court's ruling in this pre-Charter decision was based on "freedom of the press" rights included in the Canadian Bill of Rights that was enacted by Parliament in 1961. However, the Supreme Court of Canada took a different view in two post-Charter decisions when it ruled in 1991 that separate warrants to search CBC newsrooms did not violate the media's rights under s. 2(b) of the Charter of Rights and Freedoms.[89] Justice Cory, in his majority opinion in *New Brunswick* explained that the justice of the peace, in issuing such an order, should "ensure that a balance is struck between the competing interests of the state . . . and the right of the media in the course of their news gathering and news dissemination."[90] However, since the Court upheld both search warrants, observers have concluded that the media in Canada have little more protection fro third party search warrants than do individual citizens.[91]

Media and the Courts

No area of media law has attracted more attention by the courts in both countries than the one involving the relationship between the media and the courts. This area directly involves the conflict of constitutional guarantees: freedom of the press and its companion need to gather information and cover government, including the courts, and the defendant's constitutional right to a fair trial. In the United States, the conflict is between the First and Sixth Amendments. In Canada, it is the conflict between freedom of the press and other media of communication in

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[87] Privacy Protection Act (18 U.S.C.A. § 793 ff).
[88] *Pacific Press Ltd. v. R.*, [1977] 5 W.W.R. 507 (B.C.S.C.).
[89] *CBC v. Lessard*, [1991] 3 S.C.R. 421 and *CBC v. New Brunswick (A.G.)*, [1991] 3 S.C.R. 459. Both judgments were released together on November 14, 1991.
[90] *New Brunswick*, Id., at 481.

Section 2(b) and the right to a fair and public hearing in Section 11(d) of the Charter of Rights and Freedoms.

United States. The first time the U.S. Supreme Court overturned a state criminal conviction because of prejudicial pre-trial publicity was in its 1961 decision in *Irvin v. Dowd.*[92] Five years later, in *Sheppard v. Maxwell,*[93] the Court overturned another conviction and was critical of the state trial judge for not having been a better master of his own courtroom. This was instruction and a warning to all trial judges to better use all the instruments at their disposal to assure the defendant's constitutional right to a fair trial. Ten years later, in *Nebraska Press Association v. Stuart,*[94] the Court ruled that a trial judge had gone too far in issuing a restraining order against the news media (a "gag" order) to prevent coverage of a murder trial and that he had thus violated the constitutional rights of the press. If the news media could not be restrained from covering court proceedings, the next solution judges tried to assure the defendant's right to a fair trial was to close the trial to the press and the public. In 1979 and 1980, the Supreme Court issued two decisions ruling that pre-trial proceedings could be closed to protect the Sixth Amendment rights of the defendant,[95] but that criminal trials could not be closed because to do so would violate the First Amendment rights of the press and the public.[96] Two later Supreme Court decisions firmly established the constitutional right of the news media to attend and report on proceedings of almost all types.[97] In *Globe Newspaper Co. v. Superior Court,*[98] the Court struck down a Massachusetts law requiring closure during testimony of a rape victim under 18 years of age, ruling that automatic closure of proceedings is unconstitutional. Justice Brennan, for the majority, adopted a compelling interest test requiring that closure must be considered on a case-by-case basis

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[91] See Paul B. Schabas, "Search Warrants of Media Organizations: Chilling Effects or Good Citizenship?" 3 *Media and Communications Law Review* (1992-93), at 253-264.

[92] 366 U.S. 717 (1961). Two years earlier, in *Marshall v. United States,* 360 U.S. 310 (1959), the Supreme Court reversed a federal court conviction because of prejudicial publicity.

[93] 384 U.S. 333 (1966).

[94] 427 U.S. 539 (1976).

[95] *Gannett v. DePasquale,* 443 U.S. 368 (1979).

[96] *Richmond Newspapers v. Virginia,* 448 U.S. 555 (1980).

[97] Gillmor, et. al., *supra* note 76, at 174.

[98] 457 U.S. 596 (1982).

on its own merits. In *Press-Enterprise v. Riverside County Superior Court,*[99] the Court expanded the right of access to pre-trial proceedings.

Canada. Prior to the enactment of the Charter of Rights in 1982, the rights of Canadians and Canadian media to attend and report on court proceedings were much more limited than was the case south of the border.[100] Since then, however, the courts in Canada have issued important decisions that have expanded these rights considerably, but still not to the extent that the courts have in the United States. For example, trial court judges in Canada still have considerable authority to restrain the publication of certain information arising from hearings (publication of evidence tendered in a preliminary hearing is usually banned until after a full trial can be held before an unbiased jury),[101] and journalists have no general right of access to court documents unless specifically provided by statute or court rule.[102]

During the first year of the new Charter, the Ontario Court of Appeal, in a decision that is similar in some ways to *Richmond Newspapers v. Virginia,* ruled that an absolute ban on the press and public from attending court proceedings was a violation of Section 2(b). While recognizing that the guarantee of freedom of the press is not absolute, the Court acknowledged that "There can be no doubt that the openness of the courts to the public is one of the hallmarks of a democratic society. Public accessibility to the courts was and is a felt necessity; it is a restraint on arbitrary action by those who govern and by the powerful."[103] It concluded, however, that while absolute bans excluding the press and public from court proceedings did not constitute a reasonable limit while closures requiring judicial discretion would be allowed under Section 1 of the Charter. The Supreme Court of Canada offered further instruction in the application of Section 1 in matters relating to the courts in one ruling that struck down an Alberta law prohibiting publication of materials from court proceedings, ruling that such limits were not justified under Section 1.[104] In another decision, the Supreme Court ruled that an injunction restraining picketing and other activities calculated to interfere with the operations of the court was justified under Section 1, even though the lower court record included an affidavit from a member of the Law Society of British Columbia explaining that the "picket line was orderly and peaceful" and that "Persons appearing to have business inside the Courthouse entered and left the building at will and at no time appeared to be impeded in any way by the picketers."[105] Further, in *Canadian Newspapers Co. v. Canada (A.G.)*,[106] the Supreme Court held that a mandatory ban on publishing the identity of a sexual assault victim was allowed under Section 1 since it was required to achieve Parliament's objective of facilitating complaints by victims of sexual assaults.[107]

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[99] 478 U.S. 1 (1986).

[100] D. M. Lepofsky, at 75.

[101] M. Crawford, *supra* note 12, at 133.

[102] Id., at 169.

[103] *Re Southam Inc. and the Queen (No. 1),* 3 C.C.C. (3d) 515 at 521.

In a recent decision, the Canadian Supreme Court set aside a ban on CBC from broadcasting a fictional account of sexual and physical abuse of children during a trial in Ontario with similar facts and circumstances.[108] While ruling that such a ban did not meet the "reasonable limits" test of s. 1, the majority justices offered an interesting observation about differences between the Canadian and American constitutional approaches to issues like this: "Publication bans, however, should not always be seen as a clash between freedom of expression for the media and the right to a fair trial for the accused. The clash model is more suited to the American constitutional context and should be rejected in Canada."[109]

Access to Information

In both Canada and the United States, the issue of access to government information, to government proceedings, and to government institutions has been played out mainly in the legislative arena. The exception, of course, is the matter of access to judicial proceedings and court documents, discussed in a previous section.

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[104] *Edmonton Journal v. Alta. (A.G.)*, [1989] 2 S.C.R. 1326. Earlier, the Ontario Supreme Court ruled that Section 2(b) of the Charter does not confer on the media any general constitutional right to compel access to Court documents which they deem newsworthy. *R. v. Thomson Newspapers*, (1984) 4 C.R.D. 525.40-01 (S.C.O.)

[105] *B.C.G.E.U. v. British Columbia (A.G.)*, [1988] 2 S.C.R. 214, at 221.

[106] [1988] 2 S.C.R. 122.

[107] M. Crawford, *supra* note 12, at 9.

[108] *Dagnais v. CBC*, [1994] 3 S.C.R. 835.

[109] *Id.* at 839.

United States. Rights of access to federal government are provided by the Federal Public Records Law (Freedom of Information Act), which came into effect in 1967, and the Federal Open Meetings Law (Government-in-Sunshine Act) passed by Congress ten years later. The 1974 Federal Privacy Act protects the privacy of government data on individuals and provides individuals a right of access to information about them created and stored by federal agencies.[110] All states have open records laws, and every state has some form of statutory or constitutional right of access to public meetings.

The Supreme Court has issued several important decisions over the years that address the issue of a constitutional access to government and government information through the First Amendment. In *Branzburg v. Hayes,* for example, the Court explained that "It has generally been held that the First Amendment does not guarantee the press a constitutional right of special access to information not available to the pubic generally."[111] In *Pell v. Procunier,* involving the question of whether the press has rights of access to prisons exceeding those of ordinary citizens, the Court rejected any "constitutional right of access to prisons or their inmates beyond that afforded the general public,"[112] and reiterated that "The Constitution does not . . . require government to accord the press special access to information not shared by members of the public generally."[113] In *Houchins v. KQED, Inc.*, the Court dealt specifically with the question of whether the First Amendment affords the press or the public any constitutional right of access to government, and Chief Justice Burger, writing for the majority, concluded: "Neither the First Amendment nor

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[110] Gillmor, et. al., *supra* note 76, at 203.

[111] 408 U.S. 665 (1972), at 684, citing several cases, including *Zemel v. Rusk,* 381 U.S. 1, 16-17 (1965) and *New York Times Co. v United States* 403 US. 713, 728-730 (1971).

[112] 417 U.S. 817 (1974), at 834.

[113] Ibid. See, also, *Saxbe v. Washington Post Co.*, 417 U.S. 843 (1974), which follows the same reasoning used in *Pell.*

Fourteenth Amendment mandates a right of access to government information or sources of information within the government's control."[114]

Canada. With the Access to Information Act[115] in 1983, Canada joined the United States in providing a federal statutory right of access to government information. In addition, Manitoba, New Brunswick, Nova Scotia, Ontario and Quebec provide statutory access to government information in those provinces. All of the provinces but Prince Edward Island recognize a right to attend meetings of government bodies. The general, but unwritten, presumption in law in Canada is that the public should have access to meetings or hearings of official bodies acting on behalf of the public.[116] Except as concerns the right of the public to attend judicial proceedings and have access to court records, discussed in a previous section, the Supreme Court of Canada has issued no opinions since the Constitution Act of 1982 commenting on a constitutional right of access to government by the press and public under Section 2(b) of the Charter of Rights and Freedoms. However, an important principle developed through earlier court rulings in Canada, and one that has been supported by the Supreme Court in the United States, is that the news media do not have any greater privileges than the average citizen, although the courts have recognized that the news media do serve as representatives of the public.[117]

Discussion

Concerns about community, community-building and nation-building have been part of the Canadian experience from the beginning. Realities of history and geography have caused Canadians to be concerned about issues related to national unity, cultural identity, and foreign, mostly American, cultural influence through the media of mass communication. These concerns have resulted in various national communication policies, regulations, and controls which, in turn, have influenced the structure and performance of the Canadian media, resulting in a media system that is, while similar in many ways, unique and different from the one south of the border.[118]

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[114] 438 U.S. 1 (1978) at 15. In *Stahl v. Oklahoma*, 665 P.2d 839 (Okla.Cr. 1983), the Supreme Court let stand an Oklahoma Court of Criminal Appeals ruling that there is no First Amendment protection for newsgathering trespassers, and that journalists do not have a constitutional right of special access not available to the public generally. (464 U.S. 1069 (1984)).

[115] Access to Information Act, ch. 11, 1980-1982 Can. Stat. 3321.

[116] Crawford, *supra* note 12, at 153.

[117] Id., at 3.

Nation-building in the United States, on the other hand, has been a process based more on the values of independence and rugged individualism. The American media system developed on its own without government support or intervention and in response to changing social and economic situations, with little concern about forces or developments beyond national borders. It has not been until recently that scholars, community leaders and policy planners have begun to express concern about the breakdown in community and to search for solutions to problems of establishing and maintaining community as a means of dealing with problems of urban society. Established authors such as Arthur M. Schlesinger, Jr., for example, have called attention to these problems in the context of multiculturalism.[119] And in media circles, a recent call for a revision in journalistic practice to promote community through civic or public journalism has challenged the way responsible media report on and relate to the communities they serve.[120]

This paper examines the way courts in Canada and the United States have interpreted their respective constitutional provisions for freedom of expression by looking at themes in those judgments that appear to promote individualism or, more specifically, individual rights of the mass media on one hand, and community or societal interests on the other. These are not either-or distinctions, certainly, and as Greenawalt explains, the ways in which courts and legislatures approach these issues are influenced by legal traditions and broader cultural considerations as well as the practicing philosophy of the country, which can be highly individualistic or that can tend to emphasize the place of persons within communities.[121] While his analysis looks at free speech issues like flag burning, hate speech and campus speech codes, the focus of this project is on developments in the law that are more directly related to the operations of the mass media.

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[118] Many good works exist to describe and explain the development and structure of the Canadian media. See, for example: Helen Holmes and David Taras, *Seeing Ourselves: Media Power and Policy in Canada* (Toronto: Harcourt Brace Jovanovich, Canada, 1992); W. H. Kesterton, *A History of Journalism in Canada*. (Toronto: McClelland and Stewart, 1967); Marc Raboy, *Les Médias Québecois: Presse, radio, télévision, câblodistribution* (Boucherville, Québec: Gaëtan morin éditeur, 1992); Benjamin D. Singer, *Communications in Canadian Society* (Scarborough, Ontario: Nelson Canada, 1991); Herbert Strentz and Vernon Keel, "North America." The chapter on U.S. and Canadian Media in John C. Merrill, ed.,*Global Journalism: Survey of International Communication*. Third Edition (White Plains, N.Y.: Longman, 1995) at 355-394; and David Taras, *The Newsmakers: The Media's Influence on Canadian Politics* (Scarborough, Ontario: Nelson Canada, 1990).

[119] Arthur M. Schlesinger, Jr., *The Disuniting of America: Reflections on a Multicultural Society* (New York: W.W. Norton Company, 1992).

[120] See especially: Davis Merritt, *Public Journalism and Public Life: Why Telling the News Is Not Enough*. (Hillsdale, NJ: Lawrence Erlbaum Associates, 1995); Jay Rosen, *Getting the Connections Right: Public Journalism and the Troubles in the Press* (New York: Twentieth Century Fund, 1995); Jay Rosen and Davis Merritt, Jr., *Public*

While the legal systems in Canada and the United States share a similar tradition in English Common Law, their judicial and political traditions are different in important ways. For example, while their founding documents have some similarities, they reflect important differences in values and priorities. The American Declaration of Independence and its commitment to "Life, Liberty and the pursuit of Happiness" is contrasted to the British North America Act with its emphasis on the "Peace, Order and Good Government" of Canada. The former reflects an individualistic, anti-government theme while the latter reflects a trust in government and ambivalence toward personal freedom.[122] Lipset and Pool explain that while both nations seek to protect the rights of the individual while promoting and protecting the general welfare of the community, they "strike different balances, with Canada tipping toward the interests of the community, and the United States toward the individual."[123]

Similarly, the constitutional statements guaranteeing individual rights and freedoms are similar in many ways, but different in others. In particular, the American Bill of Rights provides no role for government in limiting basic freedoms while the Canadian Charter, particularly through Sections 1 and 33(1), reflects a tradition of parliamentary supremacy by specifying how federal and provincial parliaments can limit basic rights specified elsewhere in the document. And while the enumeration of rights and freedoms, including press freedom, are similar in the two documents, the firm American proscription against government from interfering with the rights to

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Journalism: Theory and Practice (Dayton, OH: Kettering Foundation, 1994); and James Fallows, *Breaking the News: How the Media Undermine American Democracy* (New York: Pantheon Books, 1996).

[121] Kent Greenawalt, *Fighting Words: Individuals, Communities, and Liberties of Speech.* (Princeton, N.J." Princeton University Press, 1995) at 7.

[122] Pritchard, David, "The Political Culture of Facts: Limits on Truthtelling in Canada and the United States," in Florian Sauvageau (ed.), *Liberté dela presse et vie privée: Regards de l'étranger/Freedom of the Press versus Privacy: Views from Abroad.* Québec: Institut québecois de recherche sur la culture, 1996, at 11.

[123] Seymour Martin Lipset and Amy Bunger Pool., "Balancing the Individual and the Community: Canada versus the United States," *The Responsive Community,* Summer 1996, Vol. 6, Issue 3, at 37.

free speech by the press and public is quite different from the more positive provision in the Canadian Charter of Rights and Freedoms which, in Section 2(b), provides that everyone "has the fundamental freedoms of thought, belief, opinion and expression, including freedom of the press and other media of communication."

Despite these fundamental differences in the form and approach to press freedom and other basic rights in the two countries, an important emerging similarity is the expanding role the courts must play in defining and applying these protections. While this has long been the case in the United States, it is increasingly the case in Canada since enactment of the new Constitution in 1982 with its entrenched Charter of Rights and Freedoms. Even in light of Charter provisions for parliamentary or legislative exceptions to these guarantees, it is ultimately left to the courts to determine what are "reasonable limits prescribed law" that "can be justified in a free and democratic society," as required by Section 1. Just as the Supreme Court in the United States long ago established that the determination of what constitutes appropriate government limitations on freedoms "is clearly a judicial responsibility, not a legislative one,"[124] the new Charter has given to judges, and ultimately the Supreme Court of Canada, "the responsibility of weighing the merits of the conduct of elected bodies and governmental officials, both legislative and administrative, against the constitutionally protected elements of liberty."[125]

Our review of the development of media law in the two countries shows that the courts on both sides of the border have expressed a strong commitment to the principle of a free press. In the United States, government restraints on the media are difficult if not impossible, with the Supreme Court ruling that such restraints "are the most serious and the least tolerable infringements on First Amendment rights."[126] The Supreme Court of Canada, while less absolutist in its approach, early on expressed strong support for a free press and "an untrammeled publication of the news and political opinions of political parties contending for ascendancy."[127] Unlike the American Bill of Rights, however, the Canadian Charter of Rights and Freedoms allows for governments to limit basic rights under Section 1, but "subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society."

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[124] Justice Holmes, *supra* note 26.

[125] Philip Anisman, *supra* note 13, at 1.

[126] *Nebraska Press Assn. v. Stuart, supra* note 41.

Canadian courts have been less likely than those in the United States to provide strict protections for the media to publish without government restraint or interference. This is most obvious in matters related to coverage of the courts, where judicial restraints are more allowable in Canada. Also, Canadian courts have permitted government bans on the publication of truthful information, lawfully obtained, while American courts have held that such bans constitute and unconstitutional prior restraint. Furthermore, media in the United States are allowed greater latitude to criticize public officials than are media in Canada, where the courts have been reluctant to adopt the American approach to public libel and and have refused to recognize a tort of false light privacy. In other areas, however, involving newsgathering, the duty to testify, and access to information, the courts in both countries have attempted to balance the rights of the news media against the broader interests of society.

In summary, this analysis of certain free press issues in Canada and the United States, like Greenawalt's more comprehensive analysis of free speech issues in the two countries, serves to demonstrate the complexity of the apparently straightforward dichotomy between individuals and communities. Both systems support the concept of a free press as an important community value while attempting to balance the individual rights of news organizations against the general welfare of the community. The differences, in the end, are more a matter of degree. The courts in both countries are responsive to their respective judicial and political traditions, and in matters of press freedom, as in others, tend to strike different balances, as Lipset and Pool explain, "with Canada tipping toward the interests of the community, and the United States toward the individual."[128]

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[127] *Reference re Alberta Statutes, supra* note 42.
[128] Lipset and Pool, *supra* note 123.

To Mourn, to Cheer, or to Fear?

Three Different Chinese Perspectives on the Death of Deng Xiaoping

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To Mourn, to Cheer, or to Fear?

Three Different Chinese Perspectives on the Death of Deng Xiaoping

Abstract

This paper examines the news coverage of Deng Xiaoping's death in February, 1997, by three newspapers in China, Taiwan, and Hong Kong, using discourse analysis within a critical theoretical framework. The results reveal that the Chinese government, directly or indirectly, influenced the gatekeeping process of all three newspapers. Although the newspaper reports reflected different political perspectives toward ongoing issues regarding China's relationship to Hong Kong and Taiwan, all appear to reflect more conservative attitudes toward the Chinese government.

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To Mourn, to Cheer, or to Fear?

Three Different Chinese Perspectives on the Death of Deng Xiaoping

I. Introduction

On February 19, 1997, Deng Xiaoping died, another Chinese legend along with his deceased contemporary peers Mao Zedong and Chiang Kai-shek. As the person who guided China from international isolation to an economic superpower, and yet whose insistence of the supremacy of the Chinese Communist Party also led to the 1989 massacre on Tiananmen Square, Deng developed a widely diverse reputation throughout the world, especially within the Chinese societies. With Deng's reformatory ruling of China for nearly 20 years, the life of 1.2 billion Chinese had been changed in different ways, particularly in the three Chinese territories of China, Taiwan, and Hong Kong. Although the news of Deng Xiaoping's death was long expected, it still triggered strong but varied reactions among the three Chinese societies. Also complicating the situation with the leader's death are the pending Chinese issues in a most sensitive era: the takeover of Hong Kong by China in July 1997, and the increasingly intense relationship between China and Taiwan over Taiwanese independence.

After being ruled by different regimes and ideologies for decades, China, Taiwan, and Hong Kong have developed distinct political environments and subcultures. For China, the dictatorial control by the Chinese Communists has led the nation to become the world's largest non-democratic country. In contrast, under the influence of Great Britain's semi-democratic tradition, the people in Hong Kong adamantly hold freedom as an unquestionable human right. In Taiwan, strong anti-communism beliefs are gradually being suppressed out of the fear of the Chinese government's military threat. Operating under such complicated political situations, the media in the three Chinese societies have developed their own cultural styles in order to survive without offending any one of the governments. The coverage of Deng Xiaoping's death by the news media in China, Taiwan, and Hong Kong offers a good opportunity to examine how sensitive political environments and ideologies influence the gatekeeping process of the news media, and eventually shape public opinion and maintain the status quo.

II. Theoretical Framework

Critical theory emphasizes the production or encoding of media text. It assumes that the social, political and economic elite exercise their power over the public through media discourse that favors the status quo. Using the immense power of the media, the ruling bureaucracies such as government and big business strategically incorporate their ideologies and values in the media content in order to shape public opinion or to inform each other about their viewpoints (van Dijk, 1993, p.243).

In this study of media coverage by three newspapers of the death of Deng Xiaoping, critical theory is used as the analytical framework to examine the influence of the ruling political and economic power and ideologies on the news media in China, Taiwan, and Hong Kong. This approach enables the researcher to examine the sensitive and complex political relations among these entities that shape the gatekeeping process of news production.

III. Literature Review

Pamela J. Shoemaker (1991) (adopted from Donohue, Tichenor, and Olien (1972)) defines gatekeeping as a "process of information control that includes all aspects of message encoding; not just selection but also withholding, transmission, shaping, display, repetition, and timing of information as it goes from sender to the receiver" (p.1). Although message encoding can be influenced by numerous sources of information such as government, society, and/or media, most of the studies of gatekeeping have concentrated on mass media operations or production.

Numerous studies of gatekeeping have examined the intervening elements in the news production process, although most of this research has focused on the news media in the United States and other liberal democratic societies. The work has yielded various results. Some researchers have concluded that wire services are the most influential force in the news flow (Giber, 1956; Bass, 1969; Whitney & Becker, 1982). Others insist that individual editors' and publishers' attitudes in news organizations set the dominant framework for news handling (Stempel III, 1959,1985; Donohew, 1967; Chang & Lee, 1992). Other scholars have emphasized the importance of every step in the communication process. McNelly (1959) noted that from the starting point of the news production process, a new story could go through a process of "leveling, sharpening and assimilation" (p.26). By the time it reaches the receiver, the story could be very different from its original inception. Each of the gatekeepers in the news flow has contributed to the alteration of the news story.

From a global or macroscopic viewpoint, the process of gatekeeping is not only conducted within the operation of a single mass media organization. It involves a larger scope of a variety of influences on the news production process, including forces rooted in politics and economics. W. Lance Bennett (1988) pointed out the significant role that politics play in media gatekeeping in The Politics of Illusion. He first acknowledged the reality of the framing influence of media on the public by stating: "Mass mediated images of reality set the limits on who in the world we think we are as a people, and what in the world we think we are doing" (p.14). In order to maintain the political status quo, mass media simplify the complex and multi-voiced reality for the audience. Even in a democratic society such as the United States, people who have power and access to pass through the media gates and convey their opinions to the public are still the powerful minority elite of the society (pp.14-15). The interdependent efforts of media and political elite manufacture consensus and consent among the public (van Dijk, p243).

Just as important as politics, economics also has an essential role in shaping news production. In commercially-driven societies, news is sold as a commodity, because the media operate just like any other business organization. They try to "offer the least expensive mix of content that protects the interests of sponsors and investors while garnering the largest audience advertisers will pay to reach" (McManus, 1994, p.85).

From the media owners' point of view, business is prosperous only when the environment in which they are operating in is stable. Therefore, nearly all of the media owners are politico-economic conservatives (Bagdikian, 1990, p.6). Michael Parenti (1993) compiled several examples in which media owners impose their conservative attitudes on their 'news product' in the Inventing Reality: The Politics of News Media. For example, media tycoons such as Rupert Murdoch and Otis Chandler have admitted that there exists an ideological selection process. They said they do exercise their power to ensure that their media organizations go along with their conservative viewpoints (pp.33-34).

In the case of China, politics definitely outweighs economics in influencing news media production. Although the media in China have long been strictly controlled by the Chinese Communists, there has been some small progress toward a freer press in the post-Mao Zedong era. In Voice of China: The Interplay of Politics and Journalism, Chin-Chuan Lee (1990) summarized three main changes in the media in China since the 1980s: (1) the greater tolerance of the articulation of pluralistic semi-autonomous groups within the system; (2) the emergence of some less ideological cultural genres; and (3) the emphasis on modernization instead of class struggle in media content. However, freedom of expression in China still means journalists have to follow "completely comradely suggestions and advice" from the party, according to an important post-Mao leader, Hu Yaobang (p.8). Hu said journalists in China must serve as the "eyes, ears, and mouthpiece" of the Chinese Communist Party and the government (Polumbaum, 1990, p.33). The function of the press in China is not only to inform but also to educate people for total devotion to the Communist Party (Guan, 1989, p.196). According to Lee (1990), the totalitarian journalism of the Chinese Communists is historically rooted in the Chinese Confucian tradition, despite the Communist Party's anti-Confucian rhetoric. The tradition of Confucian holds an unquestioning attitude toward the ruling authority, a principle which for 5,000 years has justified suppression of political dissent in China (p.8).

In contrast, in Taiwan where the political environment has changed so dramatically in the last decade, the role media play has likewise experienced several transformations. Before the democratization of Taiwan in the 1980s, the press in Taiwan operated very much like the media in China. The media were governmental tools for the ideological war between Taiwan and China, although the Taiwanese press had a bit more freedom in reporting non-political issues. As the Taiwanese government gradually loosened its control over freedom of expression, media which had been restricted in the past contributed significantly to the peaceful reformation of the political system in Taiwan (Berman, 1992, p.43). This is particularly true for alternative media such as opposition political opinion magazines and underground radio stations. Today, the media in Taiwan enjoy nearly total freedom in reporting diverse political opinions. However, the mainstream press, the national television networks, the national radio stations, and the widely circulated national newspapers, are more prone today toward conservatism in reporting political issues. For instance, national media today rarely report news in favor of Taiwanese independence, which would irritate the mainland Chinese government. This mildly pro-Taiwanese government attitude comes mainly from wealthy media owners, who can gain more interest in maintaining the stability of society by going along with the government's policy.

In a case study of Hong Kong media, Chin-Chuan Lee and Joseph Man Chan (1990) analyzed eight Hong Kong newspaper editorials during the 1989 democracy movement in China. Based on the newspapers' political inclination, the researchers categorized the newspapers into four groups: ultra-leftist, centrist, rightist, and ultra-rightist. The results of the study showed that in spite of an initial hesitation, the newspapers reflected a uniformity in their editorial stands during the controversial height of the Tiananmen student movement in 1989. The researchers suggested three main reasons for the homogenous performance of the newspapers: (1) strong market demand; (2) sympathy toward the student demonstrators; and (3) the power vacuum of the leadership in Beijing (the successor of Deng was still unclear). However, Lee and Chan did not underestimate the powerful influence of the Chinese government over Hong Kong media. They noted for example, greater restrictions on the Hong Kong press by the Chinese government after the 1989 democracy movement. The study explored shifts in the journalistic paradigm in Hong Kong: the increased conservatism after the 1984 Sino-British Joint Declaration, the temporary opening-up during the 1989 Tiananmen incident, and the re-conservatization under the stricter control of Chinese Communists after this event.

IV. Methodology

Discourse Analysis. This qualitative research method is used to examine the media text in order to discover the underlying values and ideology. The approach assumes that the encoding of media messages can in turn shape audience perceptions and attitudes as they decode the text. The power of the media comes from the audiences' limited access to information and real life situations. Although discourse analysis does not assume a passive audience, it suggests that relying on the information provided by mass media restrains the audiences' understanding of an event within the limitations of media interpretation (van Dijk, p.243).

Because of the special role media play in informing public discourse, media become a means through which social and political elite exercise their power. The discourse analysis approach assumes that the underlying ideology of the elite will be reflected in the media text. By analyzing the topics, news schemata, quotations, local semantics, style and rhetoric as well as editorials and argumentation of media messages, the researchers can uncover the direct and indirect influence of the elite over the media (van Dijk, p.243).

Chinese newspaper texts. The death of Deng Xiaoping is no doubt sensational news to the people in China, Taiwan, and Hong Kong. Every news medium in the three territories devoted all the resources it had to cover and to follow the story. For this study, three newspapers were chosen to represent the media in the three Chinese societies: the *People's Daily* of China, the *China Times* of Taiwan and the *Mingpao* of Hong Kong. Official newspaper of Communist Party, the *People's Daily*, is a widely circulated national newspaper, which like most of the media is a typical propaganda tool of the Chinese government. In contrast, the privately owned *China Times* is one of the two most popular newspapers in Taiwan, and is considered a politically neutral newspaper. The mildly liberal *Mingpao* is also a private newspaper, with the largest circulation among all newspapers in Hong Kong. Under pressure of the imminent Chinese government takeover of Hong Kong, *Mingpao*, like most of the media in Hong Kong, has in recent years tended to publish more conservative news reports. To avoid feared oppression from the Chinese government under the ruling of the Chinese Communist Party, *MingPao* today rarely prints harsh criticism of the Chinese government.

The longtime political leader of China, Deng Xiaoping died on February 19, 1997. This study will analyze one week of coverage (February 20-27, 1997) of Deng Xiaoping's death from the three representative newspapers.

V. Discourse Analysis

Of the three newspapers analyzed, the *People's Daily* carried the most news (159 stories) about the death of Deng Xiaoping. The *China Times* and the *Mingpao* both had less than half of this number of news stories (69 and 76 respectively), about this significant event.

1. Topic

The topics of news stories are the first indicator of an underlying political ideology. An examination of the three publications revealed very different topic emphases in reporting the same event.

Almost three-fourths (112) of the 159 *People's Daily* reports dealt with just two topics: how the people throughout China mourned and admired their great leader Deng Xiaoping, and how important officials of other countries expressed their grief to the Chinese government over the loss of Deng (79 stories of local people, and 39 stories of international officials). The obvious purpose for the selection of the news stories was to emphasize the greatness of Deng to the Chinese public. Such expansive eulogies were designed to illustrate how Deng's construction and reformation helped people throughout

China and the tremendous gratitude for his efforts from the local people. Thus the *People's Daily* overtly promoted the Chinese Communist Party policy for future development, which was set by Deng. Also, by underscoring Deng's high international reputation, the *People's Daily* was assuring people that the great stature of China is recognized by the international community. In other words, the underlying intention of the reports was to ensure people's confidence in the country's political and economic system and maintain stability during the leadership transition.

Among the local laudatory stories in the *People's Daily*, one was a letter from a Taiwanese citizen who has lived in the United States for 40 years. In the letter, the Taiwanese expressed his great admiration of Deng Xiaoping and his profound sorrow over his demise. The *People's Daily* exaggerated and overgeneralized the source of the letter with the headline: "Xiaoping, Taiwanese admire you," although the person's representation of the Taiwanese populace is highly questionable. Publishing this letter explicitly revealed the *People's Daily* attempt to promote the Chinese government's goal of recovering Taiwan. The *People's Daily* used the letter to convince the public that the reunification of China is the will of the Taiwanese.

Other stories in the *People's Daily*'s report were mainly glorifying Deng Xiaoping and urging people to support the new leadership, which is centered on Deng's successor Jiang Zemin. There were also a few statements of Chinese government officials on Deng's funeral arrangements and the prohibition of private mourning ceremonies. Overall, the overwhelmingly positive presentation of this news revealed the substantial influence of the Chinese government over the *People's Daily*'s gatekeeping processes. Serving as the Chinese government's propaganda tool, the *People's Daily* was used to help the ruling Communist Party to prevent any unrest which might be caused by the transition of leadership.

Overtly different from the *People's Daily*, the main focus of the Taiwanese *China Times* report of the death of Deng Xiaoping was speculation about the succeeding leadership in China, and whether the political transition will influence the relationship between Taiwan and China. Among all 69 stories related to Deng's death, about half (35) were an analysis of the political environment of either China or Taiwan. The great anxiety over the future of both the government and people of Taiwan was clearly evident in these news reports. Although the stories revealed considerable uncertainty over the future of Taiwan, most of the articles, some of which included official government sources, concluded that the death of Deng would not cause dramatic changes in the political environment in China and the relationship between China and Taiwan. To a certain degree, these analyses were designed to serve the same function as the reports of the *People's Daily*: to maintain the political and social stability. While some stories discussed the influences of Deng's death on the stock markets, the real estate market, and the investment environments in both China and Taiwan, the *China Times* reports showed that in Taiwan's case, the force behind the news operation was not only the government but also the economic elite. Both the government and business in Taiwan wish to maintain the prosperity of Taiwan. By telling people that Deng's death would not change the status quo, the *China Times* was indirectly easing Taiwanese anxiety about a possible military attack from China, thus preventing public panic.

Compared with the *People's Daily* and the *China Times*, the *Mingpao* reports of the death of Deng Xiaoping appeared to be more diverse. With Great Britain returning Hong

Kong to China in July, 1997, Hong Kong residents are undoubtedly concerned about their future under the ruling of the Chinese Communists. As with the *China Times*, the most frequent topic of *Mingpao* reports over Deng's death was an analysis of the future political environment of China, Hong Kong, and Taiwan. In the 76 stories about Deng's death, 23 focused on possible political changes. Most of these articles recognized Deng's assertion of "one country, two systems," which means the Chinese Communist Party is willing to rule the country with both socialism in China and capitalism in Hong Kong and possibly in Taiwan. The policy is regarded by the Chinese government as the best resolution of the separation of China, Taiwan, and Hong Kong and is soon to be imposed on Hong Kong. Although the Chinese government repeatedly stated that they will follow the "one country, two systems" policy and maintain the free society of Hong Kong, the people of Hong Kong still have considerable anxiety about their future. Support for the policy in *Mingpao* reports served two functions: showing support for the Chinese government and calming the people of Hong Kong about the imminent regime transition. Overall, the influence of the Chinese government was overtly reflected in the *Mingpao*'s coverage of the issue.

One unique emphasis of the *Mingpao* reports was the unfulfilled wish of Deng Xiaoping to go to Hong Kong after July, 1997, the reunification of Hong Kong and China. There were seven stories that discussed the relationship between Deng Xiaoping and Hong Kong, compared with just one in the *China Times* and two in the *People's Daily*. One of the *Mingpao* stories even pointed out that although Deng Xiaoping did not have the chance to step on the land of Hong Kong as a Chinese territory, Deng's successor Jiang Zemin will definitely fulfill Deng's final will. The sentimental approach of the stories was an attempt by *Mingpao* to underline the special status of Hong Kong for both Deng Xiaoping and the Chinese government. This resulted in a greater emphasis on self-recognition of the Hong Kong people, rather than political control by the Chinese government.

2. News Angle

As the man who changed the fate of 1.2 billion Chinese, for better or for worse, Deng Xiaoping was viewed differently even among the Chinese societies. This diverse evaluation of Deng was reflected in the newspaper coverage from China, Taiwan, and Hong Kong.

In the *People's Daily* reports, Deng was described as a remarkable hero who saved China. The *People's Daily* repeatedly used long esteemed titles created by the Chinese Communist Party to glorify Deng: "a prestigious and outstanding leader of the Communist Party, the People's Liberation Army, and the people of various ethnic groups throughout China, a great Marxist, a great proletarian revolutionary, statesman, military strategist, diplomat, a long-tested communist fighter, the chief architect of China's socialist reforms, opening up, and modernization drive, and the founder of the theory of building socialism with Chinese characteristics." Even in mentioning the 1989 Tiananmen democratic movement, the *People's Daily* took a positive view by stating that because of Deng's insistence on "socialism with Chinese characteristics," the country endured a hard test in 1989 which led to more prosperous development. In the *People's Daily* coverage, Deng was a flawless and great man. Again, the Chinese Communist Party control over the *People's Daily* was unreservedly shown in the report. The blueprint the Chinese government is following in developing the country was formulated by Deng. By promoting the ultimate admiration of Deng, the Communist Party was trying to ensure that the people have no doubts about the country's socialist system.

Prior to 1987, during the ideological war between Taiwan and China, Deng Xiaoping was portrayed as "the notorious leader of the evil Communist Party" by the Taiwanese government. Everything related to Deng was colored by negative rhetoric. As the political environment has been dramatically democratized during the last 10 years, the strong anti-Communist ideology of Taiwan has been gradually replaced by pluralistic political opinions. More recently, the realization of Taiwan's practical situation against China has led the people and government of Taiwan to shift to a new stance in dealing with Chinese issues. This new attitude toward China was reflected in the *China Times* coverage of Deng Xiaoping's death. With one exception in which Deng was called "the second generation top leader of Chinese Communists" in its first news story of the event, the only other title the China Times used in mentioning Deng was a more neutral "senior member of the Chinese Communist Party." Contrary to the rhetoric in past years, there were no negative descriptions in references to Deng. In addition, there were several stories in the *China Times* focusing on assessments by government officials, including President Lee Teng-hui, and other Taiwanese of Deng's lifetime achievements. The general evaluation of Deng's deeds from the Taiwanese was more recognition than condemnation. The relatively neutral description of Deng revealed that the island's one-time hatred toward Deng has diminished or no longer exists.

When reporting on the death of Deng Xiaoping, the *Mingpao* emphasized the 'one country, two systems' policy which was invented by Deng, mainly due to the fact that

Hong Kong will be ruled under this policy after July, 1997. How well the policy actually works will directly influence every resident of Hong Kong. Although the *Mingpao* did not honor Deng as a national savior like the *People's Daily*, out of 18 articles in *Mingpao* which discussed Deng's deeds, only two of them were negative. Most of the analyses credited Deng for creating the policy, which enables Hong Kong to maintain a capitalist system under the Chinese Communist administration. This strong promotion of the 'one country, two systems' idea directly upholds the Chinese government's policy of reunification, not only for the taking over of Hong Kong, but also for the recovery of Taiwan.

In the two negative articles in *Mingpao*, the central issue was condemning Deng for his fierce crackdown on the 1989 Tiananmen Square democratic movement. For the people of Hong Kong, the student democratic movement gave them a hope for a free future. However, with the Chinese government's inhumane resolution of the incident, many lost hope. Thus the event triggered a far stronger reaction against the Chinese government in Hong Kong compared with the international society. These two stories evidently suggested that the people of Hong Kong still cannot forget the terrible massacre, which was directed by Deng. In spite of Deng's efforts to open up China economically, which has helped millions of people, many Hong Kong residents regard the Tiananmen Square incident as Deng's biggest failure in his ruling of China.

Besides the evaluation of Deng Xiaoping, the three newspapers also showed substantial differences in reporting the Chinese reaction to the death of Deng. In the *People's Daily* reports, all of the stories about public reaction toward this event were positive. These reports all described how people throughout the country, including Hong

Kong, Macao, and Taiwan, felt a profound grief over the demise of their great leader Deng. In contrast, most of the *China Times* stories reported that a lot of Chinese in China, Hong Kong, and Taiwan, did not have strong personal feelings about Deng's death. Many of them thought that Deng had been retired from active politics for eight years, so his death was just like the demise of any other retired political figure in China. In contrast, the *Mingpao* took a pro-China perspective in reporting people's reactions. A great portion of its stories focused on how people in Hong Kong and China mourned Deng with deep sorrow. Only a few of *Mingpao's* articles showed people's indifference to Deng's death. Thus manipulation of the message to match the political perceptive of the dominant elite of the three newspapers was clearly revealed in this issue.

Regarding the most sensitive issue, the reunification of China and Taiwan, the *People's Daily* again served as the Chinese government's mouthpiece. Their reports constantly praised the 'one country, two systems' policy as Deng Xiaoping's remarkable resolution for both Hong Kong and Taiwan. The news stories did not explain how the Chinese government will end the separation between China and Taiwan, but they strongly emphasized that Taiwan will be returned to China peacefully someday. In contrast, in analyzing the future relationship between Taiwan and China, the *China Times* reports were prone to conclude that the current situation will not change much with the death of Deng. The articles obviously revealed the wish of the Taiwanese to maintain the status quo. In contrast, the *Mingpao* stories took an outsider's viewpoint in analyzing the future relationship between the Chinese and Taiwanese governments. The stories predicted that the situation between these two countries will definitely change someday, but it will not be now while the Chinese government is busy forming its new central leadership.

China's determination, Taiwan's uncertainty, and Hong Kong's concern over the issue were reflected in the news angles of the three newspapers.

VI. Conclusion

As previous research indicated (Bennett, 1988; Bagdikian, 1990), the news discourse in the three representative newspapers' coverage about the death of Deng Xiaoping confirms that politics and economics play important roles in the operation of news media in China, Taiwan, and Hong Kong. In this case study, politics were the dominant influence in the three newspapers gatekeeping processes, and the Chinese government was the major political force behind all gatekeepers' decisions. The *People's Daily* is a government owned and controlled newspaper. It strictly follows the Chinese Communist Party's media policy: mass media should be the government's mouthpiece. Politics frames everything in the *People Daily* reports. For the *China Times* and the *Mingpao*, the Chinese government indirectly but powerfully shapes their news focus and angles because the future of Taiwan and Hong Kong is in China's hands. These political factors of the sensitive situation among China, Taiwan, and Hong Kong also strongly influence the economic concerns of the news media in Taiwan and Hong Kong. For their own future interests, the privately owned *China Times* and *Mongpao* both reflect a certain degree of anxiety in their news coverage of the unpredictable political environment. In the case of *Mingpao*, the influence of the Chinese government is greater because it already has accepted the fate that Hong Kong will be ruled by the Chinese government in the near future.

From a critical theoretical perspective, there are certain ideologies that were imposed by the political and/or social elite on the newspapers coverage of Deng Xiaoping's death. For all three newspapers, the common underlying purpose of their news presentation of the event was to maintain social and political stability. They all wanted to prevent any unrest or panic that might be triggered by Deng's death. However, with different social and political systems, the definition and implications of 'stability' were not the same to the governments of the three territories.

For China, the way to ensure the country's stability during the leadership transition was to convince the people to shift their trust and support of Deng Xiaoping to the new leadership. Therefore, the ideology which Chinese government tried to impose on the public through the *People's Daily* was that the new leadership will follow Deng's ideal of 'socialism with Chinese characteristics,' which is viewed as the most suitable system for China. The Chinese government also sent a clear message to Taiwan and Hong Kong that it will not give up the goal of reunification, and Deng's 'one country, two systems' policy is the best solution to end the long separation of the three Chinese territories. The overwhelmingly positive selection and exaggerated tone of the *People's Daily* coverage of Deng Xiaoping's death reflected the Chinese government's total control over the gatekeeping process. It not only screened out all the negative messages but also took an extremely biased perspective in the decoding of the news stories. Therefore, ironically with the most resources and inside information on the death of Deng, the coverage of the *People's Daily* ironically showed the least variety of stories and political viewpoints.

Among the three Chinese territories, the future of Taiwan is the most uncertain. Ten years ago, before the democratization of Taiwan, the Taiwanese government promoted a strong anti-Communist atmosphere on the island for almost forty years. During that time, when there was rumor about Deng's death, it was regarded as exciting good news to celebrate and to cheer for. The first reaction among Taiwanese would be 'the evil head of the communists finally got what he deserves.' After a decade of democratic development, the people and the government of Taiwan have experienced a shift in the reality of the practical situation between Taiwan and China. Although an anti-Communist belief still exists among the Taiwanese, the realization of Taiwan's vulnerable situation under the constant political, diplomatic, and military threats from China prevails. Therefore, the previous national goal of 'recovering the mainland' has been substituted with a goal of maintaining the status quo. In the case of the death of Deng, the stability which the people and the government of Taiwan pursued was not break the temporarily balanced situation between Taiwan and China. Maintaining the prosperity of Taiwan and avoiding triggering a military invasion of China has become the first priority of most Taiwanese, especially the government and the wealthy economic elite who do not want to lost their businesses if China were to take over Taiwan. The ideology of avoiding conflicts between the Taiwan and China comes from both the political and economic elite in Taiwan. The *China Times* coverage of Deng Xiaoping's death explicitly revealed this dominant ideology. By manipulating the media presentation, the government and business in Taiwan were trying to curb any politically dissenting opinions, particularly the assertion of Taiwanese independence which may invite military action from China.

Although Hong Kong would not be officially returned to China until July 1997, the government of China had already asserted their power over Hong Kong's media in preparation for the future. Under Britain's ruling for 156 years, it is hard for the people of Hong Kong to accept the fact that they will be now governed by a more authoritarian socialist regime. The Chinese government's promise of 'one country, two systems' cannot totally clear the doubt in Hong Kong residents' minds that they are going to lose a certain degree of freedom. While the Chinese government attempts to calm the people of Hong Kong by telling them that they can maintain a free society, many remain fearful that their freedom will be limited, within the Chinese Communists' tolerance. In view of this fate, the media in Hong Kong has started self-regulation and censorship, which actually began when the government of China and Britain signed the Sino-British Joint Declaration in 1984. Undoubtedly, the pro-China conservative stand the Hong Kong press is now taking is due to the substantial, although indirect, influence of the Chinese government. This fear and the anticipation were expressed in the *Mingpao* coverage over Deng Xiaoping's death. The praise of Deng and the support of the 'one country, two systems' policy in these reports mirrored with the Chinese government ideology. Through the media owners, the Chinese authority now successfully dominates the gatekeeping process of the press in Hong Kong.

This discourse analysis of news reports from China, Taiwan, and Hong Kong on the death of Deng Xiaoping confirms the hypothesis of this study. The media coverage in the three Chinese societies does reflect political and economic influences over the news gatekeeping process. The dominant elite of the three societies do exercise their power by imposing their ideologies through the media and in turn on the public.

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Media Recognition and Access to the Presidential Primary Ballot

by

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MEDIA RECOGNITION AND ACCESS TO THE PRESIDENTIAL PRIMARY BALLOT

Everyone complains about media coverage of political campaigns — the voters, the candidates, the journalists themselves. Voters said the 1996 presidential contest between Bill Clinton and Bob Dole was dull because of poor press coverage.[1] Dole blamed the "liberal" press in the waning days of the campaign for his troubles.[2] NBC news anchor Tom Brokaw decried journalists' uncritical coverage of the carefully scripted national nominating conventions,[3] while *Washington Post* media writer Howard Kurtz called for less coverage of "polls and horse races" and more attention to the issues.[4]

Despite this widespread dissatisfaction with political coverage, politicians have given the media a statutory role in deciding who gets on the presidential primary ballot. In nearly a third of the 42 states that conduct presidential primaries, a candidate for president may qualify for placement on the primary ballot by being recognized by the media as a serious contender for the office.[5] Massachusetts, for example, has what will be referred to here as a "media recognition statute" for presidential primary aspirants.[6] Its statute, an excerpt of which follows, is similar to those in other states:

> The state secretary shall put on the ballot at the presidential primary the names of those candidates for president whom he shall determine to be generally advocated or recognized in the national news media through the United States. ...[7]

Although the constitutionality of such statutes has been upheld,[8] this paper argues that it is a poor and potentially dangerous public policy. Good policy should support democratic principles. Lawmakers who have passed media recognition statutes have strayed from these principles to provide a "quick and dirty" method of ballot access. Unfortunately, media coverage of presidential campaigns today is also quick and dirty, as this paper will show. Because ballot access involves basic constitutional rights, methods of access ought to be grounded in something more substantial than the latest fashion in political journalism — in other words, in democratic principles.

This paper is a call to state legislatures to change these flawed policies. It does not argue that the press ought to clean up its act and start providing more in-depth coverage of issues. Laudable as this might be, the press did not ask to be made an arbiter of candidates' qualifications for ballot access purposes. Indeed, journalists have expressed unease at the notion of being formally involved in candidate selection in relatively tangential ways. In deciding to bar Ross Perot from the fall 1996 debates, the Commission on Presidential Debates relied in part on a survey of journalists and political scientists who gave their views on Perot's chances. Some journalists declined to participate, deeming it inappropriate for them to play such a role.[9] Andrew Glass, bureau chief of Cox newspapers, said, "My job is to cover the news and on a good day to explain it, not to be a part of what's happening. Journalists have enough problems about the proper boundaries, and this just adds to the problem."[10] Moreover, under the theories of the press that prevail in the United States — libertarian and social responsibility — the press has important, legitimate extragovernmental roles in the electoral process: checking on government and informing voters.[11] To assign the press the role of helping to choose primary candidates is wrongheaded because it comes close to making it part of the very institution it is supposed to scrutinize.

It is also wrongheaded because social scientific research shows that, despite the press' role as informer of the electorate, the content of its messages is shaped by forces other than its duty to democracy.[12] A review of the social scientific research on political coverage is presented below to illustrate why it is poor policy to rely on the media to gauge the seriousness of a candidacy. The review shows that media coverage of campaigns is narrowly focused and thus presents an inadequate basis for selecting candidates for the primary ballot. The paper also discusses the reasons for this narrow focus, which stem from the values that shape media coverage — values that are completely different from those underlying the nomination process. By keeping the method of nomination firmly rooted in the latter set of values, legislatures can avoid having something as important as the nomination process subject to changing journalistic practices. Lawmakers also will maintain the power of voters in the nomination process.

THE IMPORTANCE OF BALLOT ACCESS

The method of access to the presidential primary ballot is fundamentally important. Ballot access is a policy issue worth exploring because the choice of candidates available to voters is a crucial part of the democratic process. As the U.S. Supreme Court has stated: "The impact of candidate eligibility requirements on voters implicates basic constitutional rights."[13] The method of nomination also has great practical political value. Much of the literature about presidential primaries includes a quotation from William "Boss" Tweed that bears repeating: "I don't care who does the electing, so long as I can do the nominating."[14]

It is the purpose of this paper to critically examine, from a public policy standpoint, the soundness of media recognition statutes in contrast to the traditional method of ballot access through the filing of nominating petitions. The paper will begin with a discussion of the prevalence of media recognition statutes in the United States and their specific provisions. It will be followed by some background about the role of primaries in the American electoral system and the values underlying the nomination process. Next is a discussion of the values that shape media coverage and the ways in which those values contrast with the values underlying the nomination process. This is followed by a review of the research on relevant aspects of media coverage of political campaigns. The paper concludes with an argument against media recognitions statutes.

STATE STATUTES ON PRESIDENTIAL PRIMARY BALLOT ACCESS

The most common method of gaining access to the presidential preference primary ballot is for a candidate to file petitions signed by a number of registered voters prescribed by law; this requires the candidate to have a certain level of popular support. In contrast, a media recognition statute formally gives the news media the power to propel a candidate "wannabe" to primary contender status.

Twelve states allow candidates to gain access to the presidential preference primary ballot if they are recognized by the local or national media as contenders for the office. Another two states, Mississippi and New Mexico, allow candidates access to this ballot if they are generally recognized as contenders. Although the statutes of these two states stop short of saying that such recognition must take place in the media, it is hard to imagine where else it would.[15]

Whether a candidate is recognized in the media as a serious contender is, in most states, left to the sole discretion of the secretary of state. For example, California's detailed statutes say that the secretary of state is to place the name of a candidate on the American Independent Party presidential primary ballot when the secretary "has determined that the candidate is generally advocated for or recognized in the news media throughout the United States or California as actively seeking the nomination" of that party.[16] Similarly, in Georgia, the secretary prepares a list of candidates "who are generally advocated or recognized in the news media throughout the United States as aspirants for that office and who are members of a political party or body which will conduct a presidential preference primary in this state."[17] Idaho law states that a candidate's name will appear on the ballot "if the secretary of state has determined, in his sole discretion, that the person's candidacy is generally advocated or recognized in the national news media throughout the United States."[18]

States that do not have media recognition statutes generally allow candidates access to the presidential preference primary ballot if they file nominating petitions of some sort.[19] In addition, most states that have media recognition statutes also allow candidates to gain access to the ballot by filing such petitions. Nominating petitions must be signed by a number of registered voters that is specified by law. States usually have laws governing the time period during which such signatures may be collected, who can collect them, and how and where the petitions are to be filed and verified.[20] Sometimes a filing fee must be paid when the petitions are submitted; sometimes such a fee is waived if the candidate presents a sufficient number of petition signatures. A requirement for petition signatures means that some level of popular support for a candidate must be shown in the state for that candidate to gain access to the ballot. The U.S. Supreme Court has recognized petition signatures as a demonstration of the seriousness of a candidacy.[21]

Media coverage as a proxy for public support

The criticism of media recognition statutes that is leveled here focuses on their soundness as policy rather than on their constitutionality. The Second Circuit of the U.S. Court of Appeals upheld the constitutionality of Connecticut's media recognition statute in *LaRouche v. Kezer* in 1993.[22] Connecticut's statute directs the secretary of state to place on the primary ballot the name of a candidate who is "generally and seriously recognized according to reports in the national or state news media."[23] The court determined that, because Connecticut's petition method of ballot access passed constitutional muster, the media recognition method increased the opportunities to gain access to the ballot and reduced burdens on candidates and therefore was acceptable.[24]

The *LaRouche* case centered on Lyndon H. LaRouche Jr., a candidate for the 1992 Democratic nomination for president, who was unable to gain access to the primary ballot through the media recognition method. LaRouche's campaign had submitted 500 clippings of his press coverage, some of which focused on his candidacy and some of which did not. The court noted that one such article, "Lyndon LaRouche tells of life with Jim Bakker," "indicated no significant public support."[25] This comment suggests that the court viewed media reports regarding the LaRouche candidacy as proxy indicators of his level of public support.

The media are not reliable indicators of public support; their focus is on other aspects of the primary campaign. Whether LaRouche deserved access to the Connecticut primary ballot based on existing media recognition policy is not at issue.[26] The point is that quantitative studies have shown that candidates who have significant public support do not always get media attention that reflects such status. These studies will be presented below. But before delving into the nature of press coverage of primary campaigns, the role of the presidential primary in the electoral process will be explored.

PRESIDENTIAL PRIMARIES: BACKGROUND AND RATIONALE

To show why access to the presidential primary ballot is a critical issue, this section will begin by illustrating the influential role that presidential primaries play today. For about the first half of this century, party leaders retained control of presidential nominations, despite the widespread use of primaries. But in the second half of the century, individual primaries slowly began to affect the outcome of some presidential nomination battles. Although the final decision remained with party leadership, good performance in a primary could increase a candidate's prospects. For example, John F. Kennedy raised his chance of nomination by winning the 1960 West Virginia primary.[27]

Primaries continued to serve an advisory role to party leaders until the 1970s, when their influence grew dramatically. The reasons are as follows. First, the number of primaries grew during that time. Second, in 1972, the representatives to national conventions were committed to support specific candidates chosen through the primaries, which meant that party leaders had lost control of their delegations. Primaries had thus become a dominant force in the presidential nominating system. In fact, since 1972, nearly 90 percent of the nominees also have been the top vote getters in the primaries. This is more than double the proportion during the first half of the century. Clearly, success in the primaries is the first step in a winning presidential campaign. Access to the presidential primary ballot is therefore the necessary precursor. Whoever controls access to that ballot wields considerable power; that person or group frames the choices.[28]

Today all but eight states conduct presidential preference primaries.[29] Delegates to the national nominating conventions of the major political parties are now selected by presidential primary or by state party conventions and caucuses.[30]

Rationale for primaries

To determine the appropriateness of a method of access to the presidential preference primary ballot, one must first establish the rationale for conducting such a primary. The methods of access can then be assessed to see whether they contribute to the underlying reason for the primary. A brief review of some of the scholarship on presidential primaries follows.

The process of candidate selection is central to the effectiveness of the democratic form of government. Scholars have explored the goals that a nomination process should serve and have arrived at similar conclusions about its proper functions.[31] Political scientist Thomas E. Patterson says that the nominating process should (1) produce good candidates; (2) be perceived as legitimate; and (3) strengthen the political party as an instrument of governance. In discussing the importance of having good candidates for office, Patterson notes that campaign skills alone should not be a determining factor, even though such skills have increased in importance over the years. According to Patterson, nominees should have enough government experience to understand and work within the political process; they also should have knowledge of national and international affairs so they can assume the policy duties that come with the job of president.[32]

The legitimacy of the nominating system refers to its acceptance by the people as fair. In the United States, this may mean that rank-and-file voters have a direct role in candidate selection rather than leaving the job to party leaders. Primary elections may be the method to achieve this, but caucuses are an option also. The Iowa caucuses are probably the most well-known. Patterson has good company in putting forth popular involvement as a goal of a sound nomination process. In addition to having the support of other scholarly commentators, this goal was sought by the McGovern-Fraser Commission, a commission established by the Democratic Party after the 1968 Democratic National Convention. The commission gave itself the task of rewriting party rules to give rank-and-file party members the opportunity to participate in the nominating process.[33]

Finally, Patterson argues that the nominating process should strengthen the political party as an instrument of governance. He claims that they are the best instrument of democratic politics, despite their shortcomings, but tempers this by stating he does not advocate a return to the era of "smoke-filled rooms of party bosses."[34] Rather, Patterson writes:

> The modern political party is an organization whose members are thousands of active citizens with a passionate commitment to politics. They represent the best among us in their willingness to invest time and energy toward making elections function effectively.[35]

Thomas J. Schwarz and Joseph C. Spero put forth similar goals for the nomination process. They say that the preferred method of presidential candidate selection should address three policy concerns: (1) the encouragement of citizen involvement in political processes; (2) the provision of a mechanism that ensures the accountability of the president to the electorate; and (3) the maintenance of an institution capable of effective government.

Regarding the first concern, primaries increase participation in the nominating process, involving more than a core group of active party members. In other words, a primary gives party rank and file an opportunity to become involved in the nomination process. This clearly is similar to Patterson's call for legitimacy. Regarding the second concern, political parties can ensure some accountability in that a the president must maintain party support. However, they also can deter accountability by limiting ballot access to mainstream party members. Thus the nominating system should provide opportunities for candidates who are not recognized mainstream party members. A long primary season can provide such opportunity; a relative unknown who does well early on may become a serious contender.

The third policy consideration that a candidate selection system should address, good government, involves three aspects of effective governance: the personal qualities most desirable in a chief executive; the smooth functioning of diverse government institutions and the orderly and stable transfer of power. The nominating system should promote the election of those who are capable of leading the country and who will lend legitimacy to the office and to their acts. This goal is similar to Patterson's goal of getting qualified candidates nominated.

The major political parties have a direct effect on these policy concerns, these scholars argued. They enhance citizen involvement by working to increase voter turnout; they help to ensure the accountability of the president by ensuring that the chief executive's reelection is contingent upon party support; and promote effective government by choosing candidates with well-developed political skills. In addition, the national party conventions institutionalize coalition formation, an essential aspect of effective government.[16]

The similarities that emerge in these discussions on the role of primaries are as follows: The presidential nomination process should be perceived as legitimate, preferably by involving voters; it should produce qualified, knowledgeable, experienced candidates, providing opportunity even for those outside the political mainstream; and it should bolster the political parties. The first two traits will be used as the yardstick against which media recognition as a method of nomination will be measured; examination of the role of political parties is outside the scope of this paper.

The media come up short because they do not involve voters. But does their coverage help to produce qualified, knowledgeable, experienced candidates? This paper will use the social scientific research on political communication to help answer this question. One could reasonably speculate that, to produce such candidates, the media would need to generate stories that give the details about candidates' backgrounds and experience and discuss their stands on the pressing issues of the day. A review of the research will show that coverage of candidates seldom takes this form. Instead, much of it is superficial and emphasizes the horse-race aspect of the campaign. The reason that coverage takes this form is shown to be embedded in the values that shape news coverage. These values are very different from the values that shape the nominating process. Because these sets of values are widely divergent, this paper argues that it is shoddy public policy for lawmakers to have the media help decide who will be on the primary ballot.

FACTORS THAT SHAPE NEWS COVERAGE

According to the theories of the press that prevail in the United States, the libertarian and social responsibility theories, the press' duties include checking on government and informing voters. Thus the press has a responsibility to live up to certain ideals in its work. The reality, however, is that journalists work for profit-making organizations and face an array of pressures that have little to do with these ideals. Before reviewing the social scientific research on press coverage of campaigns, it is instructive to discuss these pressures. They will provide a rationale for the type of coverage the research has found.

Journalists' news values have been discussed by a variety of commentators, from the perspective of both the scholar and the practitioner.[17] The discussion below will center on the factors that shape the news and determine newsworthiness as put forth in basic journalistic texts. A useful description of factors that shape the news is provided by John Vivian. Within the newsroom, these factors are the news hole (column space or air time available for news after advertising space has been sold); news flow (amount of material available) and staffing; perceptions about the audience; availability of material (still photographs or footage, for example); and competition (what the other news organizations are covering).[18] The factors that determine newsworthiness for reporters are impact, timeliness, prominence, proximity, conflict, currency and the bizarre.[19]

What all of these factors have in common is that, with regard to campaign coverage, they leave little room for basing news decisions on the fitness of the candidates for office. As the following review of the research will show, journalists generally do not base their coverage decisions on candidates' qualifications. Journalistic values, rather than any sense of social responsibility, tend to shape the content of media election coverage. The result is coverage that sometimes features a candidate simply because he or she performed better than expected. This is not a sound basis on which to select candidates for the primary ballot.

RESEARCH ON THE CONTENT OF POLITICAL COVERAGE

Few would argue that the media do not play a role in political campaigns. The debate concerns the extent and nature of the role. It is probably safe to say that an election is a complex process in which the news media play a part. The question this section attempts to answer is whether it is advisable for the states to formally grant the media a specific role in the process, that of determining whose candidacy is serious enough to warrant a place on the ballot. The answer will be determined by examining how the media cover election campaigns generally and primary campaigns in particular. Because political communication has been the subject of a great deal of research, this study is limited to a review of the literature on the content of political coverage. The review will show that the media emphasize the "horse race" aspect of the campaign and other aspects of politics that have nothing to do with presenting capable leaders to the electorate.

"Horse race" coverage

A feature of election coverage that is widely discussed in the research literature is its emphasis on the "game" or "horse race" aspects of the campaign. Research repeatedly has shown that the press emphasizes the game aspect of the campaign, even though candidates emphasize other matters.[40] This emphasis reflects the journalistic value of timeliness — arguably *the* core news value.

In a study of the 1984 presidential election, Holli A. Semetko et al. showed that the press strongly emphasized the game elements of the campaign, even though candidates rarely mentioned them. Candidates spoke frequently on social welfare, energy and the environment, but the press did not rank these issues as highly on its own agenda. Voters seeking to evaluate candidates on the basis of their stands on such issues would be hard pressed to inform themselves using the mass media.[41] An analysis of the media and the nominating process by Michael W. Traugott produced similar findings. He reviewed a number of studies of campaign coverage and found a press preoccupation with the game elements of the campaign itself, which he attributed to the journalist's news value of newsworthiness.[42]

Patterson, the political scientist, also addressed the "horse race" emphasis, elaborating on the nature of journalistic values. He noted that the dominant schema for the reporter is based on the notion that politics is a strategic game. Voters, on the other hand, view politics primarily as a means of choosing leaders and solving their problems. This game schema conforms to the conventions of the news process: There is always something new to write about. Policy problems lack the novelty that journalists tend to seek. Patterson's own quantitative research, which involved a content analysis of page one of the *New York Times* from 1960 to 1992, showed that the game rather than the policy schema dominated. This schema has become fundamental to political coverage, he said.[43]

Emphasis on the "game" of politics peaks during the primaries. The press' emphasis on the game means it has only four stories to tell: which candidate is leading, which are trailing, who is gaining ground and who is losing ground. The dynamic of the story line is furnished by the candidate's efforts to get votes.[44] Any gaffes trigger media feeding frenzies.[45] The press, in Patterson's view, is looking for a good story and tends to focus on the horse race aspect of the campaign.

Such an emphasis might suggest that media coverage could serve as a suitable measure of public support for ballot access purposes. However, one study showed that different measures of horse race coverage used by different researchers actually result in different perceptions of how candidates are performing in the primaries. For example, performing better than expected is one type of horse race coverage, being ahead in the polls another.[46]

Taken together, these studies do not suggest that the press can be relied upon to produce good candidates for primaries. Rather than examining candidates' fitness for office or their stands on the issues, the press expends its energy keeping track of who is ahead and who is behind. Reporters who write these types of stories are, in the eyes of their editors, doing their job. But it is hardly the basis for selecting candidates for the primary ballot.

To be sure, not all scholars have been so critical of this emphasis on the game elements of the campaign. John G. Geer analyzed front-page headlines in the New York Times from 1972 to 1988 and found that about 80 percent focused on the game aspect of the nomination. He argued, however, that this focus on the game element is not as troublesome as some scholars have suggested. Coverage that focuses on the game does not necessarily exclude other information about the candidates. Nor is it always easy to distinguish between "game" and "substance" in news coverage.[47] A study will be discussed later in this paper that explores the different definitions of "game" coverage that researchers have used.

Coverage of the unusual and of conflict

Coverage of the horse race or game aspect of the campaign reflects the news values of timeliness; it discusses the latest developments in the contest. Some media messages emphasize the news values of the unusual and of conflict. Recent studies have shown that the media focus heavily on the early presidential primaries, but lose interest as the season progresses — even before the states with a substantial number of electoral votes have held their contests.

One study showed that television coverage of presidential politics is shifting its emphasis toward primaries rather than the general election. It examined the election coverage of evening television news shows from 1972-92 and revealed that these programs focused increasingly on primaries, particularly the early primaries. The 1994 study by J. David Woodard found that in the years since 1976, primaries have received more attention from television than the fall general election. This is explained partly by an increase in the number of primaries, but also by the fact that primaries are a source of political controversy and contest.[48] Conflict is one of the factors that helps determine newsworthiness for journalists.

Woodard also found that in 1988, the television coverage devoted to the Iowa caucuses and the New Hampshire primary together accounted for nearly half the coverage given to candidates during the primary period. He attributed this to "calendar bias," or the fact that these two contests are the first in the nation. Meanwhile, coverage of the primary in California, a state that has 20 percent of the electoral votes needed to win the presidency, constituted only 4 percent of the television coverage given to candidates during the primaries. Journalists' news values, which would cause them to focus on the novelty of the first primaries and lose interest in the contests over time, obviously drove this coverage.

A study of newspaper coverage of presidential primaries had similar findings. David S. Castle examined the number of stories about primaries and caucuses that appeared in two elite newspapers, the *New York Times* and the *Washington Post*. He found, not surprisingly, that a state that conducts its primary or caucus on the same day that other states do receives less coverage than a state that conducts the contest on a day shared by no other state. In addition, Castle found the familiar journalistic emphasis on the horse race aspect of the campaign at work: The smaller the front-runner's delegate lead, the more coverage the race received. As with television, the newspapers gave less coverage to those states that have their primaries or caucuses late in the process. Castle noted that states conducting late-season primaries run the risk of having the nomination decided before their voters cast their ballots. Even the candidates, Castle said, pay little attention to the states that have become irrelevant to the outcome of the nomination.[49] Similarly, Patterson studied the 1976 Democratic primaries and found that although California Gov. Jerry Brown beat Georgia Gov. Jimmy Carter in each state where he was on the ballot, he shared headlines with winners of other contests because his victories occurred on days when two or more primaries were conducted.[50]

Journalistic value of the unusual shapes coverage in other ways, Christine F. Ridout found in a study of the 1988 Democratic nomination. The race consisted of unknown candidates with no significant early front-runner, so coverage of the Iowa caucuses and New Hampshire primary provided voters with some of the first images of the presidential hopefuls. Ridout found that Richard Gephardt's expected success in Iowa — and subsequent fulfillment of that expectation — meant that the media focused instead on Michael Dukakis. Gephardt had a small margin of victory in the caucuses, and NBC news commentators focused on how well Dukakis had done (placing third, behind Paul Simon) so far from his native Massachusetts, while Gephardt, from neighboring Missouri, failed to win a wide margin of support. Ridout also noted that Pat Robertson's surprising capture of second place in Iowa, behind George Bush, meant that media attention that could have gone to Gephardt went instead to the Republicans' race. Gephardt ended up with 5.3 percent of total network coverage after the Iowa caucuses, compared with 32.4 percent for George Bush, 18.8 percent for Pat Robertson and 10.6 percent for Michael Dukakis. Bush's struggle to survive won him substantial coverage.[51] Emphasis on the dramatic aspects of the contests apparently determined coverage.

Ridout identified three characteristics of presidential nominations that contribute to the influence of early media coverage of the process: the sequential nature of primaries, the low levels of information and unstable opinions of the electorate early in the process, and the media's emphasis on the early contests and on the horse race. These findings are in line with those of other researchers. The nominating process is uniquely vulnerable to early media influence, according to Ridout, because of the sequential nature of primaries and voters' unstable opinions and lack of information. The lack of information makes voters susceptible to media influence, and the sequential nature of the process makes the early contests important in determining the candidates in future primaries. Moreover, voters, in this vulnerable period, are presented with much horse race information about the contest. Ridout pointed out that perceptions of candidate viability, which are formed early in the campaign, are difficulty to change later on.[52]

Early coverage of the nominating process, then, can have significant effects, according to Ridout's study. This paper argues that legislatures should not add to that influence by passing media recognition statutes. (A detailed discussion of the influences of coverage on the outcome of political races is beyond the scope of this paper. Aspects of this complex issue have been explored by various researchers.)[53]

In another vein, Thomas J. Johnson scrutinized the definition of horse race coverage across studies and found that had been construed as seven elements, such as who is ahead and who is behind, expectations and momentum. His study showed that different horse race measures presented different perceptions of how candidates were faring in the campaign. And some candidates were helped, while others were hurt, by patterns of horse race coverage, Johnson said.[54] Johnson's findings are important to the thesis of this paper. Although some might argue that horse race coverage is a suitable reflection of public support, this research has shown that some types of horse race coverage focus not on the front-runner, but on other candidates who simply perform better than expected. Such coverage does not accurately reflect public support; it reflects the news value of the unusual.

As presented earlier in this paper, the yardstick for measuring the value of a nominating process required that it produce qualified, knowledgeable, experienced candidates. The preceding discussion has shown that the coverage a primary candidate receives is sometimes affected by the number of contests held on a particular day. And, as was shown in the case of Gephardt and Dukakis, sometimes the winner does not receive the lion's share of the coverage. In other words, coverage is shaped by factors that have nothing to do with the candidate's fitness for office.

Coverage does not even necessarily reflect the level of popular support the candidate has received. This line of research provides another argument against reliance on the media for selection of competent candidates for office.

Newsroom influences on coverage

Other commentators have taken a broader view of the content of press coverage of campaigns. A useful article to discuss in detail is a case study of a 1992 presidential candidate that analyzed the coverage and noncoverage he received. Joshua Meyrowitz examined the campaign of Larry Agran, a Democrat who participated in the New Hampshire presidential primary.[55] Since Agran had been mayor of Irvine, Calif. — a city of 110,000 and the nation's largest master-planned city — for 12 years, was a member of a major political party, and had foreign policy experience and a Harvard Law School degree, Meyrowitz construed him as more than a mere fringe candidate, although he did not have the customary background to be considered a major candidate.

In the case study, Meyrowitz outlines the nature of the media coverage Agran received. "Much of the mainstream national press rejected Agran before a single vote was cast and even before the public had a chance to learn who the candidates were," he wrote.[56] Although there were 36 candidates on the New Hampshire primary ballot and Agran did not have conventional presidential contender credentials, he nonetheless was lumped by the national press along with candidates who simply had paid $1,000 to get their names on the ballot. For example, he was grouped with a bicycle-riding candidate who proposed having sheep and goats tend the front law of the White House. Agran was unable to attract the attention of the national media, although the local newspapers did write about him.

Instead of providing opportunity for candidates outside the mainstream to gain access to the ballot, the national press is motivated to eliminate them from the competition as early as possible.

Meyrowitz' conversations with national journalists revealed much about the constraints under which they worked. These journalists, who were aware of Agran's candidacy, said that they typically looked for reasons *not* to cover a given candidate. Scarcity of resources — such as the cost of sending a reporter to follow the candidate, as well as the scarcity of air time — was a key explanation. Also affecting national journalists were the appraisals that party professionals gave of candidates. These journalists looked to party insiders, rather than voters, for indications of whether candidates had a chance of winning. National journalists also looked to each other to see who was considered a serious candidate. In sum, Meyrowitz found, after numerous conversations with national journalists, that electability rather than good ideas was the important criterion in determining which candidates would receive coverage. Electability was determined by party insiders and other journalists rather than voters.

More than any study reviewed here, Meyrowitz' work shows why media recognition is a poor substitute for petitioning as a method of ballot access. Going back to the yardstick that measures a nominating process by whether it that involves voters and produces qualified candidates, Meyrowitz shows that the press fails on both counts. Journalists used party insiders and other journalists rather than voters to help them assess the electability of a candidate. They used electability, rather than ideas and experience, to determine the nature of the coverage they would give a candidates.

Superficial coverage

Other research has indicated that print and electronic media coverage of the presidential campaign, both before and after the primaries, emphasizes campaign strategies and tactics rather than issues. Robert Rudd and Marjorie J. Fish examined the depth of coverage when the networks carried news of candidates' positions on policy issues. Focusing on the final two weeks of the 1984 presidential campaign, they found that issue positions of candidates were presented in more than half the news items identified for the study. But reasons for the candidates' positions were provided in less than one-third of the items. The researchers concluded that campaign issue coverage by television news is often superficial.[57]

In another study of the 1984 campaign, James G. Stovall looked at the type of news presented by newspapers, among other variables. For the traditional general election campaign period, September to November, Stovall found that coverage dealt mostly with the campaign rather than with the issues involved.[58] Similarly, Alan R. Freitag performed a content analysis of prestige press coverage of the New Hampshire primary from 1952 to 1996 and found it consisted mainly of stories about campaign strategies and tactics.[59] Taken together these three studies showed that news coverage emphasized topics other than candidates' qualifications for office. Such coverage does not provide a sound means for selecting candidates for the ballot.

Although this review of the research has produced a bleak picture of campaign coverage, some studies indicate the media do inform the electorate, in keeping with traditional press theory. A study of political knowledge and the media by Steven H. Chaffee, Xinshu Zhao and Glenn Leshner looked at the roles of newspapers and television in informing the electorate. The researchers found, not surprisingly, that television has become the principal medium of campaign communication. The study, which focused on the 1992 presidential campaign, found that for knowledge of candidates' positions on the issues, watching TV news was a stronger predictor than was newspaper reading. In addition, attention to the appearances of candidates on talk shows seemed to have improved audience members' knowledge of those candidates' positions. The authors pointed out that, although television is berated as an entertainment medium with little to contribute to the world of political campaigns, it nonetheless contributed, in this case, to people's knowledge of issue differences between the candidates.[60]

The study by Chaffee et al. showed that people can and do learn about candidates from television. The press is, apparently, still fulfilling its extragovernmental role as informer of the electorate, as specified by the prevailing theories of the press. It should continue to perform that role, providing voters with the information they need to select candidates for the primary ballot. Meanwhile, the presidential nomination process should produce qualified, knowledgeable, experienced candidates, providing opportunity even for those outside the political mainstream. It should also be perceived as legitimate, preferable by involving voters. But as the literature review above has shown, a secretary of state who is selecting candidates for the ballot by reviewing media coverage of the hopefuls will be faced with material that seldom discusses the contenders' qualifications.

Instead, coverage tends to focus on the game or horse race aspect of the campaign. It details candidates' strategies rather than their positions on the issues and their qualifications. It highlights the unusual, such as candidates who perform better than expected, even when they are not front-runners. Journalists who are spread too thin and face limited air time or column inches want to decide which candidates they need not cover. Rather than consider a candidate's qualifications, they consider the candidate's electability, which is determined for them in part by party insiders rather than voters. Voters, in fact, have no role when a candidate is selected for the ballot due to media recognition. Media recognition statutes fall short, very short, as an alternative method of ballot access.

CONCLUSION

Access to the ballot is important because it implicates basic constitutional rights: The choice of candidates available to voters is fundamental to the democratic process. This paper is concerned with a particular ballot — the presidential primary ballot. A primary serves a special function in American democracy. Its purpose is to present qualified candidates to the electorate through a method that invites voter participation.

In most states, voter participation is an integral part of the nomination process. To obtain a place on the primary ballot, candidates must file petitions bearing a specified number of voter signatures. However, in a sizable minority of states, the legislatures have provided a method of ballot access that involves no voter participation. Under this method, candidates may gain access to the ballot if the media perceive them as serious contenders for the presidency.

This is a problem because the chief function of a primary is to present qualified candidates to the electorate. If the media were filled with in-depth stories about candidates' qualifications and stands on various issues, perhaps media recognition statutes would do no harm. But this paper has shown that the media's perception of what constitutes a serious contender is strongly influenced by pressures and values that have nothing to do with the candidate's fitness for office. Such coverage makes a poor basis on which to base something as important as selection of candidates for the presidential primary ballot.

A review of the social scientific literature showed that news coverage of political campaigns is often shaped by journalists' own set of values and by practical newsroom pressures. These pressures and values result in stories about presidential primaries that tend to focus on the game or horse race aspects of the campaign. The journalistic value of timeliness leads reporters to cover the early primaries in greater detail than the later ones, and to write in depth about candidates who exceed expectations, even if they do not emerge victorious. Scarce resources cause reporters, from the earliest days of the campaign, to decide which candidates need not be covered because they are not deemed electable by political leaders. Limited column inches cause them to write less about a primary that takes place on the same day as other primaries. In short, media coverage of political campaigns is driven by a multiplicity of pressures that have little to do with the leadership abilities and other qualifications of the candidates. Yet producing qualified candidates for the general election ballot is one of the key goals of the nominating process.

Another goal is to select candidates through a process that is perceived as legitimate, and that preferably involves voters. Using media recognition as a method of ballot access, rather than nominating petitions, allows an end run around voter involvement. Although no evidence was presented in this paper about the public's views on media recognition statutes, current dissatisfaction with American journalism was discussed and would suggest problems with the legitimacy of this approach to ballot access. Also, it is questionable whether the media want to play this role that was foisted on them by policy makers. As mentioned earlier, some journalists refused to participate in a survey that a commission used to determine whether Ross Perot could participate in the televised presidential debates. These journalists believed it was inappropriate for them to give their views on Perot's chances for success. Giving the media a statutory role in ballot access is yet another way to blur the boundaries between government and the press. These blurred boundaries help no one and compromise the press in its traditional role of government watchdog.

Media recognition statutes are not sound public policy. Voters deserve to make their voices heard through the petitioning process. Policy makers should not allow the media to drown out the voice of the people in the nomination process.

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[1] Steve McClellan, *Nets Seek Novel Campaign Strategies*, BROADCASTING & CABLE, Sept. 30, 1996, at 38.

[2] Rem Reider, *There They Go Again: When Politicians Start Blaming the Media for Their Problems, It's Usually a Good Indication That They're Toast*, AM. JOURNALISM REV., December 1996, at 6.

[3] Tom Brokaw, *Why You Didn't Watch: Sure the Slick Handlers Tried to Manipulate You. But We in the Press Share Some Blame*, NEWSWEEK, August 26, 1996, at. 25.

[4] Sinead O'Brien, *Get Real*, AM. JOURNALISM REV., September 1996, at 32.

[5] The states are California, CAL. ELEC. CODE § 6520 (West 1996); Connecticut, 5 CONN. GEN. STAT. ANN., tit. 9, § 465(a) (West 1989); Georgia, 18 GA. CODE ANN. § 21-2-193(a) (Michie 1993 & Supp. 1996); Idaho, 6A IDAHO CODE § 34-732 (1995); Maryland, 3 MD. CODE ANN. ELEC. § 12-6(a) (Michie 1993); Massachusetts, 6 MASS. GEN. LAWS ANN., ch. 53, § 70E (West 1991); Michigan, MICH. COMP. LAWS § 168.614(a)(1) (West 1989); Nebraska, 3 NEB. REV. STAT. § 32-511 (1993); Oregon, OR. REV. STAT., tit. 23 § 249.078 (1991 & Supp. 1996); Tennessee, 2 TENN. CODE ANN., tit. 2 § 5-205 (1994); Washington, WASH. REV. CODE ANN., tit. 29 § 19.030 (West 1993); and Wisconsin, WIS. STAT. ANN., § 8.12(1)(b) (1996). In addition, Mississippi, 6 MISS. CODE ANN. § 23-15-1089 (1990) and New Mexico, N.M. STAT. ANN. § 1-8-56 (Michie 1995) allow candidates access to the presidential preference primary ballot if they are generally advocated or nationally recognized as serious contenders, but their statutes stop short of saying such recognition must be through the media.

[6] The term "media recognition statute" also is used in LaRouche v. Kezer, 990 F.2d 36 (2d Cir. 1993).

[7] MASS. GEN. LAWS ANN., ch. 53, § 70E (West 1991).

[8] LaRouche v. Kezer, 990 F.2d 36 (2d Cir. 1993).

[9] Neil A. Lewis, *Panel on Debates Bars Perot, Calling Him Unelectable*, N.Y. TIMES, Sept. 18, 1996, at A1.

[10] Neil A. Lewis, *How Panel Decided to Bar Perot*, N.Y. TIMES, Sept. 19, 1996, at B12.

[11] Fred S. Siebert, Theodore Peterson and Wilbur Schramm, FOUR THEORIES OF THE PRESS (1956).

[12] Melvin Mencher, BASIC MEDIA WRITING (1995); John Vivian, THE MEDIA OF MASS COMMUNICATION (3d ed. 1995).

[13] Anderson v. Celebrezze, 460 U.S. 780, 786 (1983).

[14] John G. Geer, NOMINATING PRESIDENTS: AN EVALUATION OF VOTERS AND PRIMARIES, 1-2 (1989).

[15] *Supra* note 1.

[16] CAL. ELEC. CODE, § 6520 (West 1996). Some states have different statutes covering ballot access for different political parties.

[17] 18 GA. CODE ANN. § 21-2-193 (Michie 1993 & Supp. 1996). The list is forwarded to a selection committee that can delete candidate's names.

[18] 6A IDAHO CODE § 34-732 (1995).

[19] Exceptions to this rule are Florida, which has a candidate selection committee for presidential primary aspirants; New Hampshire, which requires a declaration of candidacy and a fee; Ohio, which requires a declaration of candidacy; Oklahoma, which requires a statement of candidacy; and West Virginia, which calls for a certificate of announcement of candidacy.

[20] The exception is Georgia, where it is essential for a candidate to be recognized by the media. The secretary of state makes a list of candidates so recognized, and the list is then considered by a candidate selection committee.

[21] Lubin v. Panish, 415 U.S. 709 (1974).

[22] 990 F.2d 36 (2d Cir. 1993).

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[23] 5 CONN. GEN. STAT. ANN., tit. 9, § 465(a) (West 1989).

[24] LaRouche, 990 F.2d at 38.

[25] *Id.* at 37.

[26] LaRouche did not file petitions in an attempt to gain access to the ballot.

[27] Geer, *supra* note 14, at 2.

[28] *Id.* at 1-2; James W. Ceaser, PRESIDENTIAL SELECTION: THEORY AND DEVELOPMENT (1979).

[29] The states that do not conduct presidential preference primaries are Alaska, Hawaii, Iowa, Missouri, Nevada, Utah, Virginia and Wyoming.

[30] Thomas J. Schwarz & Joseph C. Spero, *Revision of the Presidential Primary System*, REV. L. & SOC. CHANGE 9 (1981), at 11.

[31] *See, e.g.*, Thomas E. Patterson, OUT OF ORDER (1993) at 212-16; Schwarz & Spero, *supra* note 31, at 12-13.

[32] Patterson, *supra* note 31, at 213.

[33] Larry M. Bartels, PRESIDENTIAL PRIMARIES AND THE DYNAMICS OF PUBLIC CHOICE (1988), at 20.

[34] Patterson, *supra* note 31, at 216.

[35] *Id.*

[36] Schwarz & Spero, *supra* note 30, at 13-14.

[37] Herbert J. Gans, DECIDING WHAT'S NEWS: A STUDY OF CBS EVENING NEWS, NBC NIGHTLY NEWS, NEWSWEEK AND TIME (1979); Mencher, *supra* note 12; Vivian, *supra* note 12.

[38] *See supra* note 12.

[39] Mencher, *supra* note 12, 70-74.

[40] *See, e.g.*, Robert Rudd and Marjorie J. Fish, *Depth of Issue Coverage in Television News: Campaign '84*, 33 J. OF BROADCASTING AND ELECTRONIC MEDIA 197 (1989).

[41] Holli A. Semetko, Jay G. Blumler, Michael Gurevitch and David Weaver, THE FORMATION OF CAMPAIGN AGENDAS: A COMPARATIVE ANALYSIS OF PARTY AND MEDIA ROLES IN RECENT AMERICAN AND BRITISH ELECTIONS (1991).

[42] Michael W. Traugott, *The Media and the Nominating Process*, *in* BEFORE NOMINATION: OUR PRIMARY PROBLEMS 101 (George Grassmuck ed., 1985).

[43] Patterson, *supra* note 31, at 57-68.

[44] *Id.* at 92-116.

[45] *Id.* at 153.

[46] Thomas J. Johnson, "Filling out the racing form: How the media covered the horse race in the 1988 primaries," 70 JOURNALISM Q. 300 (1993).

[47] Geer, *supra* note 14, at 90-91.

[48] J. David Woodard, *Coverage of Elections on Evening Television News Shows: 1972-1992*, *in* PRESIDENTIAL CAMPAIGNS AND AMERICAN SELF IMAGES 109-27 (Arthur H. Miller and Bruce E. Gronbeck, eds., 1994).

[49] David S. Castle, *Media Coverage of Presidential Primaries*, AM. POL. Q., Jan. 1991, 33.

[50] Patterson, *supra* note 6.

[51] Christine F. Ridout, *The Role of Media Coverage of Iowa and New Hampshire in the 1988 Democratic Nomination*, AM. POL. Q., Jan. 1991, at 51.

[52] Ridout, 46, citing Traugott, *supra* note 42.

[53] *See, e.g.*, Marc Howard Ross, *Television News and Candidate Fortunes in Presidential Nominating Campaigns*, AM. POL. Q., Jan. 1992, at 69.

[54] Thomas J. Johnson, *Filling Out the Race Form: How the Media Covered the Horse Race in the 1988 Primaries*, 70 JOURNALISM Q. 300 (1993); Thomas J. Johnson, *The Seven Dwarfs and Other Tales: How the Networks and Select Newspapers Covered the 1988 Democratic Primaries*, 70 JOURNALISM Q. 311 (1993).

[55] Joshua Meyrowitz, *Visible an Invisible Candidates: A Case Study in "Competing Logics" of Campaign Coverage*, 11 POL. COMM. 145 (1994).

[56] *Id.* at 147.

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[57] Robert Rudd and Marjorie J. Fish, *Depth of Issue Coverage in Television News: Campaign '84*, 33 J. OF BROADCASTING AND ELECTRONIC MEDIA 197 (1989).

[58] James G. Stovall, *Coverage of 1984 Presidential Campaign*, 65 JOURNALISM Q. 443 (1988).

[59] Alan R. Freitag, *A Content Analysis of New Hampshire Primary Coverage, 1952-1996*, paper presented to the Association for Education in Journalism and Mass Communication, Anaheim, Calif., August 1996.

[60] Steven H. Chaffee, Xinshu Zhao and Glenn Leshner, *Political Knowledge and the Campaign Media of 1992*, 21 COMM. RES. 305 (1994).

A MODEL OF PUBLIC SUPPORT FOR FIRST AMENDMENT RIGHTS

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A MODEL OF PUBLIC SUPPORT FOR FIRST AMENDMENT RIGHTS

Protection of basic First Amendment rights depends no less on support of the public than on the courts and other branches of government. In addition to whatever impact public opinion may have on the behavior of governmental bodies, support or erosion of basic rights impact on the conduct of citizens. Only a small proportion of potential First Amendment conflicts in everyday life end up in the court system. It is important, therefore, to understand the meaning of public support, how it works or fails to work, and what forces affect it.

Previous research provides only partial answers to many important questions. For example, we do not know if public support extends generally across all forms of expression covered by the First Amendment. Although a host of influences on public support have been identified in separate investigations, without inclusion and control within the same study we cannot identify which of these independently affect support for rights. We lack a model that integrates the various influences of public support and provides a sense of understanding of how such support develops.

Stouffer (1955) was the first systematic empirical study of public support for First Amendment freedoms. Reflecting its origins in the McCarthy era, the study focused on the extent to which the public was willing to allow Communists and members of other marginalized groups to exercise various forms of free expression. Subsequent research by political scientists and sociologist has continued to concentrate more on issues of free speech than on press freedom. Communication scholars have begun to focus on press freedom in recent years, but examination of antecedents has been largely confined to demographics (Wyatt, 1991). We seek a more extensive examination of the influences on press freedom. Not only is public support of expression consequential to the operation of the press, but it is likely that uses of

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media and perceptions of them as institutions influence the level of such support.

It is well documented that a large proportion of Americans are committed to democratic values when stated in abstract terms, but show less support when examined in concrete situations (Prothro & Grigg, 1960). We have focused here on public judgments on two types of rights cases: the (speech and assembly) rights of a neo-Nazi group to march in a Jewish neighborhood and the (press) right of a reporter during wartime to send home a story critical of the military without military clearance. (See Appendix A for question wordings). Abstract attitudes will be discussed in Conclusions.

Support exhibited in concrete situations, however, may have its limitations. Some argue that what is commonly thought of as support for rights, as in a person's choosing the pro-rights side in a hypothetical situation, actually may be that the group whose rights are threatened may not be disliked by the person seeming to support it (Sullivan, Piereson, & Marcus, 1982). They assert that tolerance requires supporting the rights of groups for whom the person feels strong disaffection; defending the freedom of liked persons may be simply the expression of positive affect. This implies we should include the level of affect for groups involved in the rights conflict cases we study.

A second group of researchers have argued against the Sullivan et al. restricted definition of tolerance (Sniderman, Tetlock, Glaser, Green & Hout, 1989). They see the key to identifying support for rights as being the person's use of principled reasoning in situations where freedoms are threatened. Their operationalization of principled reasoning is, unfortunately, confined to consistency of response across hypothetical situations and includes no direct measurement of whatever principles a person might invoke to arrive at decisions in concrete situations.

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In an attempt to bring together these diverse views on the meaning of tolerant support for rights, we have combined a focus on outcomes in terms of Supportive Decision-Making, the choices people make to uphold rather than to deny rights in concrete situations, with decision processes, the reasons people give for making such choices. We look at two types of processes: Principled Reasoning, invoking principles involving constitutional or derived rights, and Expression of Negative Affect, regarding the groups involved in the cases. Here we are building a model that examines the processes and decisions simultaneously, along with the influence of mediating factors and demographic and structural influences on support for rights.

Our research program on support for rights began in 1990 when telephone interviews were conducted with a probability sample of 300 adults. The neo-Nazi case but not the press case was included on the survey. This research nonetheless provided empirical justification for inclusion of many of the variables of our present research. Those supporting rights in the neo-Nazi case were younger, more educated, more knowledgeable about current events and legal rights, and were more avid readers of newspaper public affairs content. They were less likely to endorse material values and consensual functions for the news media. There was no influence on support for rights from income, perceived economic well being, or time spent watching television (XXXX, 1991).

The data used in this paper come from a probability sample of 439 adults drawn from the same population as that of the 1990 study and interviewed by telephone in October, 1991. We were able to develop a press rights case that allowed us to examine the consistency of decisions and reasons for decisions across cases with different rights and political situations. Respondents demonstrated reasonable consistency across cases in supportive decisions (r = +.21) and in principled reasoning (r = +.21) but expression of negative affect was specific to the case. Further, principled reasoning in one case predicted decisions in the opposite case (r = +.18, +.18).

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With the 1991 data set, we tested the effects of demographic control variables and 28 other measures potentially related to support for rights. More than half of these remained significant after demographic controls (XXXX, 1992). The patterns of influence and the intercorrelations of explanatory variables suggested a theoretically important idea: that there may be two separate routes to support for rights. One is a path of positive support through knowledge and reasoning; the other is a negative path of influence rejecting rights through concern with control and affect.

It is obvious that our previous efforts to identify influences on public support for First Amendment rights were successful. Put together in a single predictive regression analysis the twenty or so variables can account for a large proportion of variance in the case decisions. But this statistical "accounting for" should not be considered the equivalent of "explaining" support in either the theoretical or intuitive sense of the term. We need a more sensitive account that involves arranging sets of our explanatory variables in terms of how they affect one another as well as how they directly or indirectly influence how people make decisions about rights. Thus, a model is needed to generate a more coherent picture of the mediating influences and processes of decision-making. Constructing an adequate model for public support of rights is the goal of this paper.

CONSTRUCTING A MODEL

A model is a representation of the complex realities of the world. The realities of how citizen go about deciding cases involving human rights conflict are indeed complex. Building a model about human behavior always requires a compromise between two competing goals: 1) to present a relatively complete and accurate picture of multiple forces acting on each other and influencing the phenomenon we are seeking to explain; and 2) to reduce the

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explanatory model to a manageable size and complexity so as to provide a sense of understanding to readers who wish to gain insight or research guidance from the model. The compromise requires us to choose a limited number of explanatory variables that account for differences in public support for rights. It also requires that we specify relationships among the explanatory variables that convey to the reader sequences of how these affect one another and mediate influence on decisions.

The validity of a model is estimated through its fit with empirical reality. In quantitative research this means that the relationships specified among our explanatory variables and criteria must be evaluated by statistical testing. Various approaches to model testing are available but most traditional approaches provide only piecemeal evaluation. In recent years structural equation modeling has begun to be used as a more comprehensive alternative (Bielby & Hauser, 1977). This approach allows us to simultaneously examine the equations linking all specified paths or connections among variables in the model, providing estimates of the strength of each path and the overall fit of the model. We present a more technical discussion in the methods section. It is sufficient here to state that the structural equation approach is ideally suited to evaluating our attempts to build a model. It will not tell us if the paths we specify represent causal influences, but it does guide us as to whether our model based on theory and past research matches the empirical reality of the data examined. A poorly fitting model forces us to reject or revise our theory; a well fitting one allows us to interpret and elaborate the model with further research.

Our efforts to build a single model began with data reduction in constructing indices of concepts by combining dimensions and indicators of measures treated separately in our previous research. This involved factor analyses and item analyses to produce reliable indices. We then selected variables for which we could anticipate relationships with other explanatory

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variables as part of their potential implications for supportive decision-making. The research literature on public support for rights did not help us much in this regard as much of it examines a given influence as a direct influence on support, at most controlling for demographic variables. Our own research on various other topics was much more useful in specifying the connections among the explanatory variables.

Model construction proceeded by dividing the selected set of variables into two categories according to their theorized role in decision-making about rights: exogenous structural antecedents and endogenous factors that are assumed to be more actively engaged in the mediation of influence and the process of decision-making. We then placed the endogenous variable into a matrix divided horizontally into six columns and vertically into two rows. The columns represented stages or sequences of potential influence according to their "distance" from the ultimate dependent variable, supportive decisions: values, media perceptions, media use, cognitive and affective outcomes, and processes used in decisions. The rows represented the positive and negative routes to decision-making suggested by our previous analyses. The final model of the variables and their paths is shown in Figure 1.

Exogenous Variables

In building models we can think of exogenous variables in a variety of ways: as developmental antecedents of other influences, as structural locations constraining the person, or merely as controls against spurious inferences about the influences of subsequent variables. We used three demographic variables previously linked to rights support: education, age and gender. Income was not used because it failed to produce significant impact on decisions after other demographics were controlled in our previous study. We expected that each of the demographics used would impact on support indirectly through the various endogenous mediating variables. We do have theoretical reasons to hypothesize the connections of demographics to the endogenous variables, but to conserve space we will merely cite literature making direct links to rights support.

Demographics. Education has long been linked to tolerance in concrete rights situations (Converse, 1964; Lawrence, 1976; Prothro & Grigg, 1960; Wyatt, 1991; XXXX, 1991). Age has been associated with lower rights support (McCloskey & Brill, 1983; Nunn Crockett, & Williams, 1978; Ornstein, Kohut, & McCarthy, 1988), but in one study it appears to have a curvilinear relationship (Wyatt, 1991). Our previous research showed older people to be less likely to support the right of the neo-Nazis to march (XXXX, 1991). Men are generally more willing than women to support rights (Nunn et al., 1978; Stouffer, 1955; Wyatt, 1991).

Ideology and Diversity. Two other variables were also treated as exogenous. Ideology has consistently been found to be an antecedent of rights support. Political conservative tend to be less tolerant than liberals (McCloskey & Brill, 1983; Sullivan et al., 1982; Wilson, 1975, XXXX, 1991). Diversity in terms of the makeup of people in one's discussion network and in topics of conversation have been found to be linked to greater support for rights (Golebiowska, 1995; XXXX, 1991). We expected that those exposed to diversity would have a wider latitude of acceptance of ideas and practices.

Endogenous Variables: the Positive Route

Analyses of the previous data set suggested that influences on public support appear to form two distinctive routes. A positive path goes from plural values and media functions, attentive reading of public affairs content, and knowledge that leads through principled reasoning to supportive decisions in rights cases. A negative path goes through material values of control, consensual media functions, and strong disliking of groups through expression of negative affect to rejections of rights in case decisions (Figure 1). We will discuss each of these routes separately providing the theoretical rationale for the paths hypothesized and working our way through the model from the most distant variables to those most proximate to decision-making.

Post-Material Values. Values are most often thought of as shared basic qualities desired or valued for the society or group. At the individual level, they are thought to be shaped by a person's growing up in a given culture and social structural location at a particular historical time. More specifically, Inglehart (1977, 1990) provides some evidence suggesting that in the western democracies satisfaction of basic economic and security needs has produced an historical shift from material to post-material values. The emerging post-material values are those of freedom, equality, kindness and mutual help. Inglehart links these values with communication patterns extending the person's interest to the larger world and its problems. Thus, we predict:

H1. Those holding strong post-material values will attribute the higher importance to pluralistic functions of the news media.
H2. Those holding strong post-material values will be the most avid readers of public affairs material in newspapers.

Pluralistic Media Functions. Citizens are able to make judgments about the importance of various normative functions of the news media--what the press ought to be doing in performing its obligations. Traditionally, these have included two pluralistic functions: providing daily accounts of important happenings and the role of watchdog over government. Recently, the "civic journalism" movement has stimulated interest in two other pluralistic

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functions: activation of citizens and providing a forum for ideas. Together, the four pluralistic functions represent a focus on diversity, conflict and change. In contrast, two other functions advocate a more consensual world implicitly valuing conformity and social control: promoting economic development of the community and taking positions to guide citizens decisions.

Persons who stress the importance of pluralistic news functions are apt to be more interested in diverse views and to be more knowledgeable about rights of others. There is indirect evidence of this. Those stressing pluralistic functions for the news media were more interested in hard local news and were more knowledgeable about local issues (XXXX, 1995). Our earlier rights support study indicated that those emphasizing pluralistic media functions were more likely to uphold the right of the neo-Nazis to march (XXXX, 1991). Here we assume that public affairs media use and knowledge mediate the effects of plural media functions on rights decisions. We also assume that an interest in pluralistic functions of news will focus attention on diverse groups and their rights. Thus, we predicted:

H3. Persons placing greater emphasis on pluralistic functions of the news media will be more attentive readers of public affairs in newspapers.
H4. Persons placing greater emphasis on pluralistic functions of the news media will be more knowledgeable about current events and civil liberties issues.

Newspaper Public Affairs Use. A vast body of literature supports the idea that attentive reading of public affairs newspaper stories leads to acquisition of knowledge and reflective thought about public issues. Although television news attention exhibits some of this capability, its power to convey such information is much weaker (XXXX, 19). As a result, we concentrated only on newspaper public affairs use in the model. We predicted that:

H5. Attentive readers of newspaper public affairs content will be more knowledgeable than others about current events and civil liberties issues.

H6. Attentive readers of newspaper public affairs content will be more likely than others to use principled reasoning in their deliberations about civil rights cases.

Knowledge. The index of knowledge used in the model combines two dimensions of knowledge: current events information and knowledge of civil rights legal issues. Perhaps it is obvious why the latter form of knowledge would be associated with invoking of principles when deciding their position on the civil rights cases (Sniderman et al., 1989). It is less obvious why current events knowledge would produce more principled reasoning. Our assumption is that current events knowledge represents a broader picture of the diverse groups and interests. Then too, our two cases were modeled on two actual cases that had been in the news in recent years. Thus, our prediction covers both types of knowledge:

H7. Persons with greater levels of knowledge about current events and civil liberties will be more likely to use principled reasoning in coming to their judgments of rights cases.

Principled Reasoning. Measurement of principled reasoning was based on the reasons respondents gave for arriving at their decisions in the rights cases. It would seem obvious that invoking of such principles would be almost automatically tied to decisions supporting the rights of the neo-Nazis and the reporter. We should note, however, that it was possible to invoke rights on the opposite side of the cases as well--for example, the right of privacy for the Jewish residents of the neighborhood in the neo-Nazi case. Nonetheless, we assume that allowing the march and the right to send home the story require a more elaborated set of principles. Sniderman et al. (1989) also argue that principled reasoning is a key influence on support for rights. We thereby predict:

H8. Invoking of principles in reasoning about right cases will be associated with decisions supportive of rights in such cases.

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Endogenous Variables: the Negative Route

The proposed negative path operates independently of the positive path through information gathering, knowledge and reasoning. It reflects the person's concern with control over one's life, avoidance of conflict and suggests judgments based on affect and fear. This set of forces should lead to decisions restricting free expression.

Material Values. Concern with order, safety, and protection of a comfortable life-style characterize material values. Materialists are thought to be devoted to preserving the past and resistant to change (Inglehart, 1990). They are likely to see the scary world of entertainment television as matching their view of the world. They are likely to dislike non-mainstream groups that threaten loss of control over their own lives. Thus, we predicted:

H9. Those holding strong material values will watch more entertainment television programming.
H10. Those holding strong material values will be more likely to dislike non-mainstream groups involved in civil rights cases.

Entertainment Television Viewing. Prime-time entertainment television content contains little information about citizens' rights and presents almost continuous expressions of affect and resolution of conflict by force rather than reason. As a result we predicted:

H11. The most avid entertainment television viewers will be more likely to express negative affect as part of the process of decision making in rights cases.

Disliking of Groups: Groups whose right are threatened are often outside the mainstream and hence disliked by large segments of the public. In our cases, the neo-Nazis are almost universally disliked and journalists, though generally approved of, are also disliked by many people. The level of affect regarding the groups involved in rights disputes can be expected to be brought into deliberative process in rights disputes. We thus predicted:

H12. The more negative the affect felt for groups whose rights are threatened, the more likely is negative affect to be expressed in the process of deciding the case.

Expression of Negative Affect. Expression of negative affect can be seen as a short-cut alternative to reasoning in the process of decision-making in rights cases. Where the protected groups in such cases are strongly disliked generally, the expression of affect will lead to advocacy of the suppression of their rights. Thus, we predict:

H13. Expression of negative affect in deliberating rights cases will lead to decisions restricting expressive rights.

METHODS

A probability sample of 436 adult residents of XXXX,XX was interviewed by telephone in October, 1991. Random-digit dialing procedures were used to ensure access to unlisted numbers. One adult was randomly chosen to be interviewed at each selected number. Interviewing was conducted by trained graduate students and seniors enrolled in a research methods course. The interviews averaged about 25 minutes and each was authenticated by staff and professional interviewers.

The sampling method produced a sample with characteristics broadly representative of the 1991 U.S. population as a whole. Residents of Dane county are older than the U.S. adult population (1994 Census median = 34; sample median = 38). The median household income is in the same category as the national median income (1994 Census median = $36,959). The sample is more educated (43% of the sample has completed college, 22% of national population has completed college), although corresponding to Census data for XXXX.

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Measures

There are two types of variables in the model of public support for first amendment rights. The first type, exogenous variables, includes education, gender, age, ideology and network diversity. The second type, endogenous variables, includes values, media functions and use, disliking of groups involved in a particular rights controversy, current events and civil liberties knowledge, principled reasoning and expression of negative affect, and supportive decision-making. Exogenous variables influence other variables in the model but they are not influenced by them. Therefore, they serve as background variables. Endogenous variables are "causally" dependent on other variables in the model.

Supportive Decision-Making. Respondents' decisions about support for the right of a neo-Nazi group to march in a Jewish neighborhood, and the right of a reporter during wartime to send home a story critical of the military without military clearance, were recorded as "yes, support the right," "it depends," or "no, do not support the right." Yes responses were coded as 3, depends as 2 and no was scored as 1. The responses were summed across cases. (Exact wording for this and other survey items appears in Appendix A. Descriptive statistics of all variables are presented in Appendix Table 1).

Principled Reasoning and Expression of Negative Affect. After making a decision in a given case, respondents were asked why they answered as they did. Respondents who failed to make a clear choice in a case were asked if they could tell any arguments related to the issue. Up to three responses were coded for each question. Each response was coded into one of seven categories, which were developed empirically by a group of graduate students on the basis of responses to a pre-test and from early coder-reliability findings. The final code guide included these categories: constitutional rights, derived rights; outcomes; affect; moral/ethics; media job description; and legal considerations. Responses within each category were coded as positive or negative. Intercoder reliability achieved a Scott's pi coefficient of .55. Positive responses within the first two categories, constitutional and derived rights, were summed across cases to constitute a Principled Reasoning score, and sum of negative responses within affect category constituted Expression of Negative Affect score.

Knowledge. Two sets of questions were used to measure knowledge. Current events knowledge was the sum of correct answers to five questions: the name of the president of the Russian republic; the country that voted not to renew the U.S. lease on the Subic Bay Naval Station; the major event going on in Yugoslavia; the name of the person making charges against Clarence Thomas; and the city where Rodney King was beaten by police. Civil liberties knowledge was indexed by a set of three true-false questions about flag burning, government banning of demonstrations, public officials and press. In addition, respondents were asked to name what freedoms are guaranteed by the First Amendment and what the common name of the first ten amendments to the U.S. Constitution is. Correct responses were summed into a single score.

Disliking of Groups. Disliking is measured with questions asking respondents about their feeling toward six groups involved in two cases on a "100-degree thermometer." To build a single measure, averaged ratings of groups for which disliking can negatively affect support in two cases (neo-Nazis, journalists) were subtracted from averaged ratings of groups whose liking might decrease support (Jewish people, U.S. Government, Department of Defense and state government officials).

Media Use. Two patterns of media use, Newspaper Public Affairs and TV Entertainment, are measured with variables indicating respondents' frequency of exposure and closeness of attention on 1-to-10 scales. Newspaper Public Affairs is a combination of exposure and attention to three types of hard news: international affairs, national government and politics and local government and politics. TV Entertainment combines exposure and attention to two types of TV programs: situation comedies and crime and adventure.

Pluralistic vs. Consensual Functions. Respondents used a 1-to-10 scale (from not at all to extremely important) to judge importance of six normative functions of media. Four of the functions can be termed pluralistic in focusing on conflict and change: giving a daily account; being a watchdog over government; providing a forum for ideas; and helping people play active roles. Two other functions advocate a more consensual world implicitly valuing conformity and social control: promoting economic development of the community; and taking positions to guide citizens' decisions. A single measure is built by subtracting the average score of consensual functions from the average score of pluralistic functions.

Values. Ten items adapted from Inglehart (1977, 1990) were used to measure the respondent's value priorities. Departing from Inglehart's ranking procedures, we used ratings on a ten-point scale of ten values. Factor analysis confirmed the presence of two factors conceptualized by Inglehart and also found in our 1990 study. Post-materialism is comprised of five values: freedom to express your ideas; to be kind and friendly to each other; to have more say in government decisions; to help each other; and equal opportunity for all. Materialism is indexed by high ratings of five other values: live a comfortable life; maintain order in nation; make sure this country has a

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strong defense; fight against crime; and maintain a high rate of economic growth.

Exogenous Variables. In addition to questions dealing with age and recording the gender of respondents, education was measured by asking respondents the highest year of school that they have completed. Ideology was measured on two seven-point scales from very liberal to very conservative in terms of economic and social issues. Network diversity is an index consisting of three questions measuring exposure to controversial issues and four questions measuring conversation with people of different views on a five-point frequency scales. Exposure to controversial issues indicated how often the respondent had engaged in discussions when others had taken different points of view from themselves on topics of race relations, religious beliefs and radical political views. Conversation with people of different views indicated how often the respondent talked on regular basis with African-Americans, Jewish people, homosexuals, and political radicals.

Analysis

Our analysis specifies and estimates a covariance structure model of two contrasting processes, positive and negative, of supportive decision-making. The estimation method involves successive computation of regression equations, beginning with an equation containing only exogenous variables, then computing equations that add intervening variables in sequence from cause to effect. This generates the information that allows for decomposition of effects in their direct and indirect parts (Alwin & Hauser, 1975), and reveals the mechanism by which change in variables may occur. Three types of effects are estimated. A total effect indicates how much change in a consequent variable is induced by a change in an antecedent variable. Indirect effects are those parts of total effects that are transmitted or mediated by some other variable that is specified as an intervening variable in the model. Direct effects show how much of the total effect remains when the intervening variables are held constant. In other words, this is the part of the total effect that is not transmitted via the intervening variable (Alwin & Hauser, 1975).

RESULTS

The estimated structural equation model is complete recursive system with education, gender, age, network diversity and ideology as exogenous variables. The model specifies that values are on the first stage of endogenous variables, pluralistic media functions are on the second, media use on the third, knowledge and disliking of groups on fourth, principled reasoning and expression of affect on fifth stage. The final stage of endogenous variables is supportive decision-making. The variables in the later stages are influenced only by variables on the earlier stages. This particular ordering of variables embodies the theories underlying the hypotheses being tested. We allowed the residual for principled reasoning to covary with the residual for expression of affect because the errors in coding for one construct negatively affected the coding for the other ($\Psi = -.12$).

The final model in Figure 1 is obtained by freeing any path that modification index suggested is not 0, and by fixing to zero any structural coefficient that does not differ significantly from 0. Thus, the model is pruned of nonsignificant effects. The model reproduces the observed variances and covariances well, as indicated by a .31 probability value for the overall fit, a chi-square of 56 with 52 degrees of freedom and a comparative fit index (CFI) of .997. The Squared-multiple correlations for structural equations indicate that the model accounts for 55% of variance in supportive decision-making. The parameter estimates of the model are reported in Tables 1 and 2.

The direct effects of exogenous variables and endogenous variables are captured by γ and β coefficients, respectively.

Structural and ideological precursors of supportive decision-making. The effects of structural and ideological variables on supportive decision-making are completely mediated by endogenous variables in the model. Education has the strongest positive effect on support for rights (.16; Table 1) through its direct influence on higher judgment of importance of media pluralistic functions (γ= .18), newspaper public affairs use (γ= .14) and knowledge (γ= .22). More educated people are also less likely to be materialistic (γ= -.21) and to use TV Entertainment (γ= -.14) which overall reduces their decision-making through the negative route. The positive indirect effect of network diversity on supportive decisions (.13) has similar structure as the effect of education: it is mediated through use of newspaper public affairs (γ= .15), importance of pluralistic functions (γ= .18) and knowledge (γ= .07). However, high network diversity reduces the negative route to decision-making only by decreasing materialism (γ= -.15).

Older age has a negative indirect effect on supportive decisions (-.12) through its direct positive effect on materialism (γ= .14) and stronger disliking of groups (γ= .17). The positive route to supportive decision is reduced by giving less importance to pluralistic media functions (γ= -.13) and less often invoking principles (γ= -.18). Some counterbalance to the predominantly negative route of the elderly is achieved by their higher use of newspaper public affairs (γ= .27) and lower exposure and attention to TV entertainment (γ= -.26). The negative route also dominates in decision-making of conservatives (-.09), and it is bolstered by conservative preference for materialistic values (γ= .31). Gender does not determine support for rights because its effects on mediating variables cancel each other. Men are more likely than women to know more about civil liberties and current events

(γ= .24), to use newspaper public affairs (γ= .19) and to judge the importance of media pluralistic functions higher (γ= .13). Women are more likely to value post-materialism (γ= -.22), to invoke principles in their reasoning (γ= -.13), but also to express their negative affect (γ= -.13).

Consequences of values, media use, and reasoning processes. The effects of endogenous variables further emphasize differences in patterns of influence on decision-making through positive and negative routes. The support of rights comes most strongly from the direct effect of principled reasoning (β= .57; Table 2), followed by direct and indirect effects of knowledge (β=.11; .17) and indirect effects of newspaper public affairs use (.14), high importance of pluralistic media functions (.06), and post-materialism (.03). On the other hand, rejection of rights comes most strongly from the direct effect of expression of affect (β= -.15), the direct and indirect effects of materialism (β= -.14; -.15), disliking of groups (β= -.08; -.03), and indirect effect of exposure and attention to TV entertainment (-.04).

Moving from left to right in the positive route we see that post-materialism positively influences both newspaper public affairs use (β= .14) and judging importance of pluralistic functions (β= .13) which, in turn both positively affect knowledge (β= .24; β= .14). Higher knowledge makes more likely invoking of principles (β= .29). Principled reasoning, which mediates the positive effects of knowledge, also independently increases supportive decision-making (β= .57). The positive route is strengthened by the direct effect of pluralistic functions on newspaper public affairs use (β= .11), the direct effect of newspaper public affairs use on principled reasoning (β= .13), and the direct effect of knowledge on supportive decisions (β= .11). In addition, pluralistic functions mediate the positive effects of education, male gender and network diversity, newspaper public affairs use mediates the positive effects of education, male gender, age, and network diversity, and knowledge mediates the effects of education, male gender, and network diversity. Materialism with its negative effect on principled reasoning ($\beta = -.17$), and TV entertainment by reducing knowledge ($\beta = -.10$), suggest overflow of the negative to positive route. The positive route is slightly weakened by negative influence of male gender on post-materialism, while the negative influence of male gender on principled reasoning is canceled out by its negative effect on expression of affect.

In the negative route, materialism positively affects both TV entertainment use ($\beta = .20$) and disliking of groups ($\beta = .21$), which in turn increase expression of negative affect ($\beta = .11$; $\beta = .19$). Expression of negative affect leads to rejection of rights ($\beta = -.15$). The negative route is dominated by direct and indirect effects of materialism. In addition to influencing supportive decisions through TV entertainment use and disliking of groups, materialism also directly increases expression of negative affect ($\beta = .15$) and directly reduces supportive decision-making ($\beta = -.14$). Disliking of groups has a direct effect on rejecting rights ($\beta = -.08$) in addition to negative influences on supportive decisions through expression of negative affect (-.03). The strength of a negative route is somewhat lessened by the negative effects of education and network diversity on materialism and education and age on TV entertainment use.

CONCLUSIONS

Our research goal was to build a well-fitting, relatively complete and parsimonious model of public support for First Amendment rights. We were able to use theory and past research to build a model that our data fit quite well according to the criteria of structural equation modeling. With a few exceptions, the model seems applicable to decisions in both the neo-Nazi speech/assembly case and the reporter in wartime press case. Fitting as large a model as our own is a difficult task. This may account for why most well-fitting models in the social science literature are restricted to just a few variables.

Quality of the Model. As discussed earlier, model building requires a delicate balancing act between two competing criteria: completeness and accuracy on one hand and parsimony and simplicity on the other. We do not claim this to be a complete model, though we do account for substantial proportions of variance in decision-making (54.9%) and in the two process variables directly affecting it (20.6% for principled reasoning, 11.0% for expression of negative affect). Also impressive is 38.4% accounted for in the knowledge index.

We did nonetheless drop several variables linked to support for rights which added to the complexity but not much to the explanatory power of the model. For example, two dimensions of abstract schema emerged from a second-order factor analysis of 20 attitude items, one supporting rights and the other favoring controls over press and speech. They did provide corroborative evidence for the controversial connection between abstract support and upholding rights in concrete situations. Each predicted directly in their appropriate directions to decisions about rights in the concrete cases and also worked indirectly through the two process variables. But including them in the model immediately prior to the process variables weakened the fit of the model slightly and only made it more complex.

If we can make a strong claim for accuracy and completeness, our case for the parsimony of the model is more tenuous, given the seven endogenous mediating variables and two process variables. It is clear, however, that the evidence tells us that support for rights is an extremely complex phenomenon that defies a simple analysis. Doubtless other models with different arrays of variables could also produce an adequate fit. We invite such attempts. We do feel the present model provides a reasonable sequencing of variables providing insights not only into the origins of rights support but also for the role of media in affect such support. The ultimate question of utility of the model can only be assessed by close examination: does it convey a sense of understanding of what is going on? We believe the model, though tentative, is a vast improvement over most of the literature that merely assesses the bivariate contributions of demographic variables.

Role of Exogenous Variables. Four of the five exogenous variables made a net contribution to support of rights (education, diversity) or to their rejection (age, conservative ideology) in concrete cases. For each variable, however, the impact was indirect through from one to five mediating and process variables. We believe this helps us to interpret demographic and structural variables in a more dynamic way rather than their usual static analysis as locators of support. The paths portrayed in the model are complex. Only ideology works through a single mediator, material values. Education and diversity enhance support indirectly if consistently through both the positive and negative routes. Age and gender influence variables that reduce their overall indirect effect on support, in the case of gender to eliminate its net influence. Network diversity particularly adds to the support for rights literature with its strong direct influence on four mediating variables and substantial indirect positive effects on process and decisions.

Role of Endogenous Variables. The two dimensions of values provided a contrast in their effects. Post-materialism proved to be somewhat disappointing. It did fulfill its predicted relationship to plural functions and newspaper use, but its indirect impact on subsequent variables and decisions was rather small. This is surprising, given that expressive freedom is one of its indicators. In contrast, the impact of material values on non-supportive decisions was very strong, equal to the supportive contribution of knowledge. Its direct impact went beyond the predicted effects on entertainment viewing and dislike of marginalized groups to influence process by enhancing the expression of negative affect and reducing principled reasoning and to less supportive rights decisions. The placement of values in the model should be considered somewhat problematic; it would be possible to reverse the media and values variables without damaging the model very much. Print media use would strengthen post-material values while entertainment viewing would enhance material values.

The three media variables had substantial impact. The importance of perceptions of media as institutions was illustrated by the Pluralistic Functions variable. Those emphasizing pluralistic functions were more attentive newspaper readers and were more knowledgeable; those perceiving consensual functions as important were heavy television viewers. Attentive newspaper reading and entertainment viewing enhance principled reasoning and expression of negative affect, respectively, and each had effects on rights decisions. The media variables play an important role in the model. Excluding them reduces the fit of the model substantially.

Knowledge is the linchpin of the positive support route influenced by gender, education and diversity and in turn impacting strongly on principled reasoning and supportive decisions. Because it is a composite of current events and civil liberties indicators, we disaggregated knowledge into its two parts for separate analyses. The results indicated that both components contributed to reasoning and support: current events knowledge as well as awareness of legal aspects of rights are important supportive influences.

Disliking of groups influenced expression of affect and non-supportive decisions across cases. But the affective relationships proved to be the most problematic linkages when we examined the two within-case models. In contrast to the substantial correlations in principled reasoning and decision-making across cases, disliking of neo-Nazis in the speech case and journalists in the press case were uncorrelated. Thus, disliking and its consequence, expression of negative affect, tend to be case dependent. The levels of disliking and expression of negative affect were much higher in the neo-Nazi case. Negative affect may be just one of the processes leading to restricting rights. Future research should examine other processes. It should also examine a wider range of cases than was possible here.

The Dual Route Model. We believe we have presented strong evidence for two distinctive routes to support for First Amendment rights: a positive path through knowledge and reasoning and a negative path through concern with control and negative affect. This supports our less elaborate analyses with the data of the previous year's study. The dual routes parallel findings from other research on crime perceptions and policy judgments where the positive route led from education and reflective media use to support of preventive crime proposals while a negative part went from local crime media use to distorted perceptions and fear of crime to endorsement of punitive crime policies. Thought and reason may contend with concern with control and fear in many areas of public policy. We should not confuse the two routes.

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Figure 1: A MODEL OF PUBLIC SUPPORT FOR FIRST AMENDMENT RIGHTS

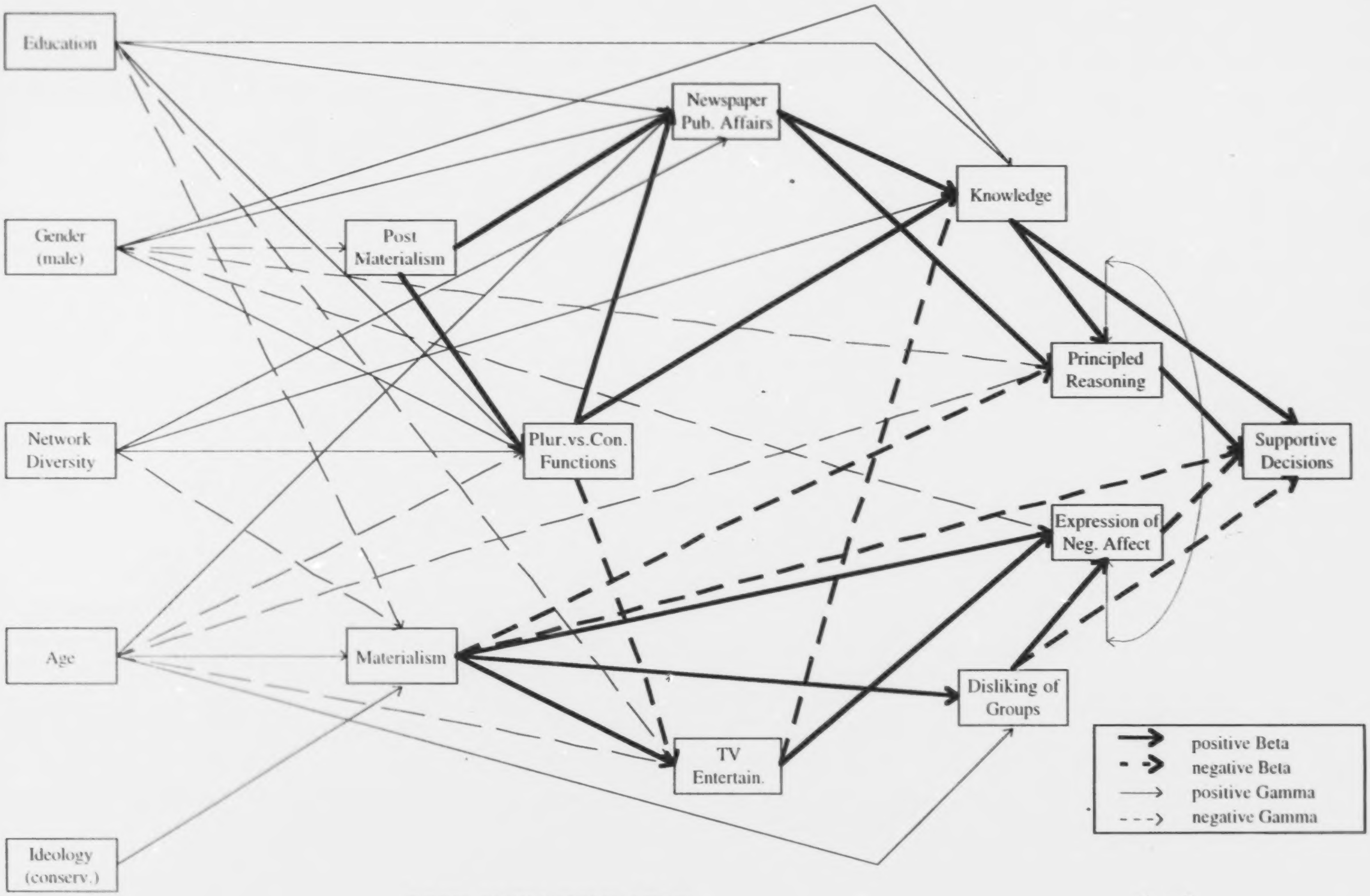
Education
Gender (male)
Network Diversity
Age
Ideology (conserv.)
Post Materialism
Materialism
Newspaper Pub. Affairs
Plur.vs.Con. Functions
TV Entertain.
Knowledge
Principled Reasoning
Expression of Neg. Affect
Disliking of Groups
Supportive Decisions
positive Beta
negative Beta
positive Gamma
negative Gamma

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Table 1
Direct and Indirect Effects of Exogenous Variables
(expressed as Gammas)

Dependent Variables		Education	Age	Gender (male)	Ideology (conserv.)	Network Diversity
Values						
Post- material	direct	-	-	-.22	-	-
	indirect					
Material	direct	-.21	.14	-	.31	-.15
	indirect					
Media Perceptions						
Plur. vs. Cons. Functions	direct	.18	-.13	.13	-	.18
	indirect	-	-	-.03	-	-
Media Use						
Newspaper Public Affairs	direct	.14	.27	.19	-	.15
	indirect	.02	-.01	-	-	.02
Television Entertainment	direct	-.14	-.26	-	-	-
	indirect	-.07	.04	-.01	.06	-.06
Cognition						
Knowledge	direct	.22	-	.24	-	.19
	indirect	.09	.07	.06	-.01	.07
Disliking						
of groups in controversy	direct	-	.17	-	-	-
	indirect	-.04	.03	-	.06	-.03
Process						
Principled Reasoning	direct	-	-.18	-.13	-	-
	indirect	.15	-	.11	-.05	.12
Negative Affect	direct	-	-	-.13	-	-
	indirect	-.06	.03	-	.07	-.04
Decision-Making						
Supportive Decision	direct	-	-	-	-	-
	indirect	.16	-.12	-	-.09	.13

All effects are at least 1.96 times their standard errors.

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Table 2

Direct and Indirect Effects of Endogenous Variables
(expressed as Betas)

Dependent Variables		Values		Media			Cogn.	Affect	Process		
		Post-Mater.	Material	Pl.Cs. Func.	News. P.A.	TV Ent.	Knowledge	Dislike of Grps.	Prin. Reas.	Neg. Aff.	R^2=
Media											
Plur. vs. Cons. Functions	direct	.13	-								13.7
	indirect										
Newspaper Pub.Aff.Use	direct	.14	-	.11							16.1
	indirect	.01	-								
Television Entertaiment	direct	-	.20	-.13							14.1
	indirect	-.02	-								
Cognition											
Knowledge	direct	-	-	.14	.24	-.10					38.4
	indirect	.06	-.02	.04							
Disliking											
of Groups in controversy	direct	-	.21	-	-	-					8.8
	indirect	-	-	-							
Process											
Principled Reasoning	direct	-	-.17	-	.13	-	.29	-			20.6
	indirect	.04	-.01	.07	.07	-.03					
Negative Affect	direct	-	.15	-	-	.11	-	.19			11.0
	indirect	-	.06	-.02	-	-					
Decision-Making											
Supportive Decision	direct	-	-.14	-	-	-	.11	-.08	.57	-.15	54.9
	indirect	.03	-.15	.06	.14	-.04	.17	-.03			

All effects are at least 1.96 times their standard errors.

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Appendix A

Wording of Survey Questions

Supportive Decisions:

(War Case) There are many ways people or organizations can respond to an action with which they disagree. I am going to read you a situation and ask what you think about it. Suppose the United States is involved in a war in a foreign country. The government issues rules whereby journalists' reporters will be subject to Department of Defense clearance. One reporter defies the rules by sending off his report which reflects negatively on the U.S. military but which does not divulge military secrets.
Do you support the right of the reporter to send home a story without military clearance?

(Nazi Case) Now, let's turn to another situation. Suppose a neo-Nazi group which believes Jewish people to be a threat to society planned to hold a rally near a synagogue in a predominantly Jewish neighborhood in this area in order to publicize its anti-Semitic views. In an effort to prevent the rally, the chief of police refuses to issue a permit for the rally. Do you support the right of the neo-Nazi group to hold a rally?

Would you tell me why you answered as you did? [PROBE: ANY OTHER REASONS?] Can you tell me any arguments someone might use in opposing your position? Can you tell me any arguments related to this issue? [PROBE: ANYTHING ELSE?] Can you tell me any arguments someone might use in another side?

Current Events Knowledge:

Now, let's turn to some questions about current events. Who is the current president of the Russian Republic?; The senate of what country recently voted not to renew the U.S. lease on the Subic Bay Naval Station?; What major event is currently taking place in Yugoslavia?; Who is the witness making charges of sexual harassment against Supreme Court nominee Clarence Thomas?; In what city was motorist Rodney King severely beaten by a group of police officers?

Civic Knowledge:

Now, I'm going to ask you some questions regarding Constitutional Rights. I'll read you some statements. For each of those statements, I would like you tell me whether you think it's true of false. Under the current law, it is not a crime for people to express their views by burning the American flag; Under the current law, the Federal Government can prevent some people from holding demonstrations because of the ideas they hold.; To win libel suits against a newspaper, public officials need to prove that the paper intentionally lied or published the libel despite serious doubts of its truth. Still thinking about the U.S. Constitution, The First Amendment guarantees several important freedoms. As far as you know, what are those freedoms? (PROBE: ANY OTHERS); Could you tell me the common name of that part of the U.S. constitution which contains the first ten amendments?

Disliking of groups:

We'd like to get your feelings toward particular groups of people. When I read the name of a group, I'd like you to rate that group using a 100-point feeling thermometer. Ratings between 50 degrees and 100 degrees mean that you feel favorable and warm toward the group. Ratings between 0 degree and 50 degrees mean that you don't feel favorable toward the group and that you don't care too much for that group. If I come to a group but you don't feel particularly warm or cold toward the group, you would rate the group at the 50 degree mark. Now, let's begin. How would you rate Journalists; Jewish people; neo-Nazis; U.S. Government officials; Department of Defense officials; State Government officials

Newspaper Public Affairs Exposure and Attention:

Now, I would like to know how often you read each of the following types of news content. You can use any number from zero to ten, where ZERO means DON'T READ, ONE means RARELY READ, and TEN means ALL THE TIME. How often do you read: International affairs?; National government and politics?; Local government and politics?

When you are reading the newspaper and come across the following kinds of stories, how much attention do you pay to them? Here, ONE means LITTLE ATTENTION and TEN means VERY CLOSE ATTENTION. How much attention do you pay to International affairs?; National government and politics?; Local government and politics?

TV Entertainment Exposure and Attention:

Let's use a zero-to-ten scale again, where ZERO means DON'T WATCH, ONE means RARELY WATCH, and TEN means ALL THE TIME. How often do you watch each of the following types of content? Situation comedies?; Crime and adventure?

When you are watching television and come across the following types of content, how much attention do you pay to them? Here, ONE means LITTLE ATTENTION, and TEN means VERY CLOSE ATTENTION. How much attention do you pay to Situation comedies?; Crime and adventure?

Pluralistic vs. Consensual Functions:

The news media are expected to play many different roles in our society. I'm going to read you a list of goals that people have suggested the news media should try to accomplish. Some of these may seem more important than others. For each of these, would you tell me how important you think it is as a goal. Use any number from one to ten, where ONE is NOT IMPORTANT AT ALL and TEN means EXTREMELY IMPORTANT. How important is it for the news media To give people a daily account of what's happening in the world; To be a watchdog over the behavior of government and government officials.; To promote projects that aid economic development in the community.; To take clear positions on issues to guide citizens' decisions.; To provide a forum for a wide range of viewpoints on important issues.; To help people play active roles in community controversies.

Values:

There is a lot of talk these days about what goals people most value. Moreover, people may differ in assigning priority or importance to various goals. Now, I will read you a list of goals people value. Please tell me how important each of the goals is to you. Use any number from one to ten, where ONE means SOMEWHAT IMPORTANT, and TEN means EXTREMELY IMPORTANT. How important is it To live a comfortable life.; To have the freedom to express your ideas.; To maintain order in the nation.; To make sure that this country has strong defense forces.; To be kind and friendly to each other.;

To fight against crime.; To have more say in the decisions of the government.; To help each other.; To maintain a high rate of economic growth.; To have equal opportunity for all.

Education:

What is the highest year of school you have completed?

Age:

What was your age on your last birthday?

Ideology:

The terms "liberal" and "conservative" may mean different things to people depending on the kind of issue one is considering. In terms of economic issues, would you say you are: very liberal; liberal; somewhat liberal; moderate; somewhat conservative; conservative; very conservative.

Now thinking in terms of social issues and people's behavior, would you say you are: very liberal; liberal; somewhat liberal; moderate; somewhat conservative; conservative; very conservative.

Network Diversity:

I am going to ask you about the people you talk with on a regular basis. Would you say you've talked VERY OFTEN, FAIRLY OFTEN, OCCASIONALLY, SELDOM, OR NEVER with African-American?; Jewish people?; People who you would say are homosexual?; Persons who you would say are politically radical?

Now I'm going to ask you some questions regarding discussions you may have had with friends or family. I will read you a list of issues. For each issue, I'd like you to tell me how often you've been involved in a discussion in which you and another person took different points of view. Would you say you've been involved VERY OFTEN, FAIRLY OFTEN, OCCASIONALLY, SELDOM, OR NEVER in a discussion concerning Race relations.; Religious beliefs.; Radical political views.

Appendix Table 1

Descriptives

	Value	Percent	Mean	SD
Supportive Decisions				
	.00	21.0	2.22	1.47
	1.00	5.0		
	2.00	36.4		
	3.00	6.6		
	4.00	31.0		
War Case				
Not Support the Right	.00	32.3	1.29	.92
It Depends	1.00	6.4		
Support the Right	2.00	61.3		
Nazi Case				
Not Support the Right	.00	49.9	.93	.96
It Depends	1.00	7.5		
Support the Right	2.00	42.6		
Principled Reasoning				
	.00	30.0	1.33	1.24
	1.00	32.3		
	2.00	21.0		
	3.00	10.0		
	4.00	4.6		
	5.00	2.1		
War Case				
	.00	53.8	.65	.81
	1.00	29.6		
	2.00	14.4		
	3.00	2.3		
Nazi Case				
	.00	50.6	.68	.79
	1.00	33.0		
	2.00	14.6		
	3.00	1.8		
Expression of Negative Affect				
	.00	70.8	.35	.60
	1.00	23.5		
	2.00	5.2		
	3.00	.5		
War Case (Affect toward Group)				
	.00	94.8	.06	.26
	1.00	5.0		
	3.00	.2		
(Other Affect)				
	.00	96.6	.04	.20
	1.00	3.2		
	2.00	.2		

Cont.

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	Value	Percent	Mean	SD
Nazi Case (Affect toward Group)				
	.00	81.3	.21	.46
	1.00	16.4		
	2.00	2.3		
(Other Affect)				
	.00	95.2	.05	.23
	1.00	4.6		
	2.00	.2		
Knowledge (range 0-14)			7.24	2.69
Current (range 0-5)			3.02	1.56
Civic (range 0-9)			4.22	1.62
Disliking of Group (range 0-100)				
Jewish People			68.07	20.89
U.S. Government			49.08	20.52
Defense Officials			49.99	22.88
Journalists			59.48	17.13
Nazis			14.81	18.71
Newspaper Public Affairs (range 0-10)			5.60	2.56
International News Exposure			5.19	3.42
National News Exposure			5.51	3.32
Local Government and Politics Exposure			5.70	3.18
International News Attention			5.57	3.06
National News Attention			5.74	2.93
Local Government and Politics Attention			5.91	2.85
TV Entertainment (range 0-10)			3.57	2.24
Sitcom Exposure			3.74	2.93
Crime and Adventure Exposure			3.14	2.81
Sitcom Attention			3.88	2.86
Crime and Adventure Attention			3.53	2.86
Pluralistic vs. Consensual Functions (range 1-10)			7.93	1.51
Daily Account			8.88	1.76
Watchdog			7.44	2.52
Forum			8.38	2.09
Active Role			7.03	2.40
Economic Development			7.18	2.37
Guide Decisions			4.59	3.13
Post Materialism (range 1-10)				
Freedom of Expression			9.50	1.09
Kindness			9.36	1.27
Say in Government Decisions			8.28	1.88
Helping			9.30	1.27
Equality			9.54	1.04

Cont.

	Value	Percent	Mean	SD
Materialism				
Comfortable Life			8.04	1.89
Order			8.45	1.95
Defense			7.11	2.57
Fight Against Crime			9.09	1.51
Economic Growth			7.85	2.05
Years of Education (range 6-21)			14.68	2.45
Age (range 18-86)			39.63	14.29
Gender (Male)		49		
Ideology (range 1-7)			3.92	1.29
Economic			4.32	1.42
Social			3.52	1.65
Network Diversity (range 1-5)			2.95	.69
Talking with African-Americans			3.16	1.15
Talking with Jewish People			3.25	1.11
Talking with Homosexuals			2.77	1.18
Talking with Political Radicals			2.75	1.10
Different Views on Race Relations			3.03	1.15
Different Views on Religious Beliefs			2.97	1.10
Different Radical Political Views			2.73	1.10

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Appendix Table 2

Correlation Matrix

	1.	2.	3.	4.	5.	6.	7.	8.	9.	10.	11.	12.	13.	14.	15.	16.	17.	18.	19.	20.	21.	22.	23.	24.	25.	26.	27.	28.	29.	30.
1.	1.00																													
2.	.69	1.00																												
3.	-.35	-.23	1.00																											
4.	.37	.36	-.15	1.00																										
5.	-.25	-.17	.25	-.02	1.00																									
6.	.00	.01	.14	.02	.42	1.00																								
7.	-.11	-.12	.12	-.07	.50	.16	1.00																							
8.	-.32	-.22	.21	-.18	.60	.11	.63	1.00																						
9.	.13	.07	-.02	.08	-.21	.28	.32	.14	1.00																					
10.	.01	-.01	-.08	-.23	-.48	-.08	.14	.12	.03	1.00																				
11.	.10	.19	-.03	.38	.11	.13	.08	.04	.11	-.11	1.00																			
12.	-.14	-.06	.14	-.21	.01	-.08	.08	.17	.05	.06	-.07	1.00																		
13.	.21	.19	-.09	.33	-.09	.01	-.01	-.16	.11	-.07	.17	-.17	1.00																	
14.	-.01	.06	.04	.06	.01	.19	-.01	-.05	.15	-.06	.14	-.03	.11	1.00																
15.	.02	.07	.06	.13	.10	.12	.04	.03	.08	-.11	.20	.01	.13	.65	1.00															
16.	-.12	-.04	.12	-.05	.09	.19	.03	.12	.14	-.04	.06	.03	.01	.79	.42	1.00														
17.	-.07	.01	-.01	-.00	-.05	.08	-.12	-.05	.07	-.05	.12	-.05	.03	.59	.34	.41	1.00													
18.	-.14	-.08	.10	-.07	.08	.18	.04	.09	.10	-.00	.10	.03	.01	.83	.42	.71	.47	1.00												
19.	-.05	.04	.08	.01	.02	.15	.06	.01	.14	-.00	.08	.04	.02	.78	.48	.51	.35	.55	1.00											
20.	-.38	-.27	.23	-.26	.24	.04	.16	.41	-.01	.04	.00	.22	-.22	.00	.18	.22	.25	.18	.08	1.00										
21.	-.14	-.08	.19	-.10	.09	.00	.02	.14	.01	-.05	.01	.17	-.10	.10	.32	.17	.12	.16	.21	.61	1.00									
22.	-.27	-.15	.14	-.16	.15	.07	.14	.26	.04	.05	.06	.13	-.13	.26	.32	.36	.36	.34	.24	.76	.32	1.00								
23.	-.38	-.30	.21	-.23	.31	.09	.21	.48	-.01	.05	.03	.16	-.21	.04	.19	.25	.25	.24	.11	.85	.39	.59	1.00							
24.	-.33	-.24	.19	-.17	.18	.10	.13	.26	.07	-.01	.07	.16	-.06	.37	.30	.44	.33	.44	.30	.68	.33	.58	.51	1.00						
25.	-.26	-.16	.17	-.24	.15	.07	.07	.27	.02	.04	-.02	.20	-.20	.26	.20	.36	.34	.33	.32	.73	.40	.49	.54	.50	1.00					
26.	.27	.20	-.16	.42	-.08	-.01	.-06	-.25	.06	-.15	.22	-.22	.26	.03	.09	-.08	-.07	-.08	-.04	-.36	-.10	-.27	-.33	-.21	-.34	1.00				
27.	-.20	-.19	.13	-.04	.22	.19	.12	.14	.03	-.08	.19	-.18	-.18	.07	-.01	.12	.15	.16	.03	.22	.04	.20	.24	.17	.17	-.09	1.00			
28.	.05	.01	-.12	.23	-.08	-.26	..03	-.05	-.12	-.00	.09	.00	.10	-.18	-.09	-.18	-.12	-.17	-.12	-.06	-.00	-.13	-.02	-.12	-.13	.10	-.15	1.00		
29.	-.29	-.22	.13	-.17	.14	-.05	-.13	.32	.04	.09	-.06	.16	-.15	-.09	-.04	.05	.04	.03	-.02	.44	.16	.33	.45	.25	.28	-.27	.13	.05	1.00	
30.	.24	.21	-.07	.31	-.03	.20	-.04	-.26	.05	-.09	.16	-.11	.24	.06	.08	-.11	.02	-.07	.01	-.35	-.18	-.21	-.35	-.21	-.24	.30	-.14	-.10	-.36	1.00

1. Supportive Decisions; 2. Principled Reasoning; 3. Negative Affect; 4. Knowledge; 5. Affect; 6. Affect toward Jews; 7. Affect toward U.S. Government; 8. Affect toward Defense Officials; 9. Affect toward Journalists; 10. Affect toward Nazis; 11. Newspaper Public Affairs; 12. TV Entertainment; 13. Pluralistic vs. Consensual Functions; 14. Post Materialism; 15. Value of Freedom; 16. Value of Kindness; 17. Value of Say in Government; 18. Value of Helping; 19. Value of Equality; 20. Materialism; 21. Value of Comfortable Life; 22. Value of Order; 23. Value of Defense; 24. Value of Crime; 25. Value of Economic Growth; 26. Education; 27..Age; 28. Gender; 29. Ideology; 30. Diversity

309

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310

Virtual Meetings:
Breakdown or Breakthrough in Participatory Government?

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Virtual Meetings: Breakdown or Breakthrough in Participatory Government?

In 1996, a Rhode Island assistant attorney general ruled that the Barrington Town Council had violated the state's open meeting law by using fax transmissions to circulate among themselves a letter later sent to the newspaper editor.[1]

In Madison, Wisconsin, the University of Wisconsin's athletic board illegally used electronic mail and phone contacts to amend a $7.9 million contract with Reebok.[2]

In Maryland, Baltimore County's community college board members turned back $25,000 worth of personal computers they had hoped would improve communications after the county's attorney ruled that e-mail messages among them would violate the open meetings law.[3]

A Carroll County, Maryland, planning commission, charged with violating the law through e-mail communications, argued that simultaneous communications in cyberspace "chat rooms" would violate the law, but e-mail exchanges did not.[4]

In Phoenix, e-mail communications among public officials raised public concerns about the secrecy of government actions.[5] And in Massachusetts, a members-only Internet bulletin board for public officials excluded the public from discussions.[6]

These news items suggest the problems that arise when new information technologies allow government agencies to conduct business through virtual meetings.[7] At least one journalist argues that -- in the hands of government -- the "personal computer, keyboard and modem" are the contemporary equivalent of the "smoke-filled rooms where politicians once traded favors for votes."[8] Clearly, government secrecy is not a new problem. Government officials long have evaded public scrutiny of their actions by conducting government business in smoke-filled back rooms, clandestine meetings, surreptitious conversations, letters, telephone calls, and teleconferences. However, the ease and ubiquity of computer-mediated communications may increase both the ability and the opportunity for government agencies to exclude citizens from government decision making.

Participatory Democracy

Sociologists suggest that the information revolution that began to reshape society in the mid-1950s also increased disillusionment and broke down citizen participation in government.[9] Boorstin has suggested that the move from physical to commercially mediated communities in the 20th century weakened the ties binding American communities.[10] Yankelovich has argued that the increasing proliferation of information and the elimination of public spaces for deliberation contributed to social disintegration.[11] Rheingold has noted that the movement toward virtual communities connected through computer-mediated networks demands a Herculean mass psychological reconception of self and society.[12]

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[1] Jerry O'Brien, State Tells Council: No More Business by Faxes, THE PROVIDENCE JOURNAL-BULLETIN, Feb. 8, 1996, at 1C.

[2] Amendment to Pact, MILWAUKEE JOURNAL SENTINEL, Aug. 21, 1996, at 3.

[3] Editorial: Cyber-Loophole in Open Meetings Law, THE BALTIMORE SUN, March 29, 1996, at 18A.

[4] James M. Coram, Officials Accused of Violations, THE BALTIMORE SUN, April 30, 1996, at 1B.

[5] Editorial: Public Access to E-Mail, THE ARIZONA REPUBLIC, Oct. 14, 1996, at B6.

[6] Chris Fiscus, New Way to Do the Public's Business Out of Public View, THE PRESS-ENTERPRISE (Riverside, Ca.), June 1, 1996, at A15.

[7] In this context, virtual meetings occur when any information technology permits simultaneous communication to several people who are not in each other's presence.

[8] Kyle Niederpruem, E-mail New Battle for Disclosure of Public Business, QUILL, Jan./Feb. 1997, at 48.

As these social and economic forces erode the tendency of citizens to seek involvement in government, increased government use of information technologies may impede citizen participation.[13] Large and small communities across the nation now link their internal operations and offer certain public services through voice mail, interactive audio and video systems, electronic bulletin boards, electronic mail systems, web pages, Gopher servers, and more.[14] Most of these government systems, designed primarily to disseminate information rather than to foster interaction, limit citizen "input" to selection from a paltry menu.[15] The technologies that enable government to reach across geographic barriers also exclude next-door neighbors who lack the wherewithal to connect to the information superhighway.[16] As political scientist Becker notes, there are "serious political problems in how to structure new media in the best interest of participatory democracy."[17] New information technologies may undermine, rather than improve, citizen involvement and government accountability.

This research attempts to evaluate these concerns at the state level. This study sifts through the intricacies of various statutes, court rulings, and advisory legal opinions in the 50 states and the District of Columbia to determine how the different states legally enable or constrain the conduct of public business through virtual meetings. This article attempts to answer the following question: To what extent do state laws designed to assure open government enable information technologies "to extend -- or impede -- democracy's reach?"[18]

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[9] Alvin Toffler and Heidi Toffler, CREATING A NEW CIVILIZATION (1995) (identifying the three waves reshaping community as: 1) systematic use of agricultural principles, 2) industrialization, 3) ascendence of information); Richard C. Harwood, CITIZENS AND POLITICS: A VIEW FROM MAIN STREET AMERICA (1991).

[10] Daniel J. Boorstin, THE DECLINE OF RADICALISM: REFLECTIONS ON AMERICA TODAY (1968).

[11] Daniel Yankelovich, COMING TO PUBLIC JUDGMENT (1991).

[12] Howard Rheingold, THE VIRTUAL COMMUNITY: HOMESTEADING ON THE ELECTRONIC FRONTIER (1993).

[13] In the context of this article, information technologies refers primarily to computer-mediated communications. However, discussion also includes any electronic technology that enables real-time communication among people who are not in each other's presence (e.g., telephone, teleconference, interactive video).

[14] John Jolusha, Virginia's Electronic Village, THE NEW YORK TIMES, Jan. 16, 1994, at Sec. 3, 9; Martha Willman, How to Get Around Town While Standing in Place, LOS ANGELES TIMES, Sept. 30, 1993, at J-1; Sally J. McMillan and Kathryn B. Campbell, Online Cities: Are They Building a Virtual Public Sphere or Expanding Consumption Communities? (1996), unpublished paper on file with the author.

[15] Daniel M. Weintraub, The Technology Connection, 44 STATE LEGISLATURES 6 (June 1993); Christa Daryl Slaton, TELEVOTE: EXPANDING CITIZEN PARTICIPATION IN THE QUANTUM Age (1992)

[16] *See, e.g.*, Benton Foundation, Telecommunications and Democracy, COMM. POL. BRIEFING #4 (1994). In 1994, only 11 percent of U.S. households had a personal computer with a modem.

[17] Benton Foundation, Telecommunications and Democracy, COMM. POL. BRIEFING #4 (quoting Ted Becker of Auburn University) (1994).

Experts say it is "almost impossible" to compare state open meetings laws without extensive research, and no published research analyzes state differences in handling virtual meetings by government agencies.[19] This study fills that gap by offering an overview of the legal status of government meetings via information technologies as of January 1997. Following a brief introduction to open government legislation, the article examines the statutes and their legal interpretations, beginning with statutes that expressly permit or prohibit the use of information technologies to conduct public business. The paper then attempts unearth the meaning of the significant number of state statutes silent on information technologies by examining the legal interpretations of these laws.

The author finds that, as applied, neither the express statutory provisions nor the silent statutes provide consistent guidance to government agencies on the use of information technologies. Ambiguous and silent statutes leave too much room for discretion by individual boards and fail adequately to protect citizen access to government. The concluding section recommends model statutory provisions on open virtual government meetings.

Open Government

For two decades, all 50 states and the District of Columbia have mandated that government bodies conduct their business in public.[20] Legislatures asserted the right of citizens to oversee and participate in their own governance through open meeting laws enacted because neither the Constitution nor common law protected public access to government.[21] As one scholar noted in 1977, "Open government is believed to serve as both a light and disinfectant in exposing potential abuse and misuse of power. The deliberation of public policy in the public forum is an important check and balance on self-government."[22]

Many state open meeting statutes incorporate policy statements noting that because "a representative government is dependent upon an informed electorate, it is declared to be the policy of this state that meetings for the conduct of governmental affairs and the transaction of governmental business be open to the public."[23] In Washington, the Open Public Meetings Act declares: "The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed ..."[24]

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[18] Benton Foundation, Telecommunications and Democracy, COMM. POL. BRIEFING #4 (1994).

[19] Ben Wear, Open Government: Not as Open as It Once Was, AUSTIN AMERICAN-STATESMAN, March 17, 1996, at G1.

[20] Sharon H. Iorio, How State Open Meeting Laws Now Compare with Those of 1974, 62 JOUR. QUARTERLY 741 (1985).

[21] *See, e.g.*, State ex rel. Stephan v. Board of Cty. Commrs of Seward, 254 Kan. 446 (1994); Open Meeting Statutes: The Press Fights for the 'Right to Know,' 75 HARV. L.REV. 1199 (1962).

[22] Osmon, Comment: Sunshine or Shadows?: One State's Decision, 1977 DET. COL. L. REV. 613, 617 (1977).

[23] KAN. STAT. ANN. @ 75-4317 (a) (1995).

[24] WASH. REV. CODE ANN. @ 42.30.010 (1995).

But statutes differ widely on the mechanisms established to protect government openness. Some offer only a brief general statement of policy and intent.[25] Others comprise scores of distinct acts detailing the rules and policies for enumerated public bodies.[26] Some state statutes enumerate whether and how information technologies may be used to conduct public business. Others provide little or no indication of the state's policy on virtual meetings and leave determinations of their legality to attorneys general and the courts. Lack of clarity in many statutes breeds confusion among citizens and government officials and undermines consistent rulings on when and why virtual meetings are legal.

Statutory Provisions for Use of Information Technologies

Express Allowance

Twenty-four state open meeting statutes specifically permit government agencies to conduct public business through the use of information technologies. In Alaska, meetings by teleconference are permitted "for the convenience of the parties, the public, and the governmental units conducting the meetings."[27] Fourteen other states also broadly permit virtual meetings. Connecticut, Kansas, Kentucky, Missouri, New Jersey, South Carolina, Utah, and Vermont all permit government boards to conduct meetings "in person or by means of electronic equipment."[28]

Colorado's Open Meetings Law permits public business to be conducted electronically but stipulates that "if elected officials use electronic mail to discuss pending legislation or other business among themselves, the electronic mail shall be subject to the requirements" of physical meetings.[29]

Georgia revised its open meetings law effective July 1, 1996, to allow government meetings by "teleconference or other similar means,"[30] and Hawaii revised its law in 1994 to permit meetings by video conference so long as all members could see and hear each other.[31] In Montana, government boards are broadly permitted to convene either through "corporal [assembly] or by electronic equipment."[32] Yet the statute also recognizes citizens' "constitutional right to be afforded reasonable opportunity to participate in the operation of governmental agencies prior to the final decision of the agency."[33]

Electronic meetings are permitted in North Carolina and Oregon if the government agency provides "a location and means whereby members of the public may

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[25] *See, e.g.,* District of Columbia code.

[26] *See, e.g.,* California code.

[27] ALASKA STAT. @ 44.62.310 (a), 44.62.312 (6) (1996).

[28] CONN. GEN. STAT. @ 1-18 (b) (1994); KAN. STAT. ANN. @ 75-4317 (a) (1995); KY. REV. STAT. ANN. @ 61.805 (5), 61.826 (Michie 1995); MO. REV. STAT. @ 610.010 (1995); N.J. REV. STAT. @ 10:4-8 (b) (1996); S.C. CODE ANN. @ 30-4-20 (d), 30-4-70 (b) (1995); UTAH CODE ANN. @ 52-4-2 (2) (a) (1996); VT. STAT. ANN. tit. 1 @ 312 (a) (1995).

[29] COLO. REV. STAT. @ 24-6-402 (1996).

[30] GA. CODE ANN. @ 50-1-5 (Michie 1996).

[31] HAW. REV. STAT. @ 92-3.5 (a) (1996).

[32] MONT. CODE ANN. @ 2-3-202 (1995).

[33] MONT. CODE ANN. @ 2-3-101 (1995).

listen."[34] The NC law also allows agencies to charge each member of the public "a fee of up to $25 ... to defray in part the cost" of providing such a location and access service.[35]

Other states place restrictions on how, when, and why government boards may conduct business through information technologies rather than physical meetings. Some states prohibit votes at virtual meetings. Others limit the frequency of such meetings. Some states allow individual board members to participate electronically with a physical meeting. Others stipulate the degree and type of public access that must be provided to virtual meetings.

California's law allows local government agencies to receive public comment and to deliberate -- but not take action -- through video teleconferencing that permits both audio and visual communication among the board members and the public.[36] South Dakota also appears to limit meetings "conducted by teleconference" to the exchange of information, not the taking of action.[37]

State agencies in California may use electronic conferencing, which requires only audio interaction, so long as discussion is audible to the public and at least one board member is present at the announced location of the meeting.[38] Similarly, Virginia law constrains both the frequency and the function of electronic meetings. In Virginia, government bodies may conduct no more than one-fourth of their meetings "through telephonic or video equipment"[39] which extends, rather than replaces, physical meetings of members.[40] Despite this, Virginia law makes it illegal for a government board to conduct public business "where the members are not physically assembled" except in cases of emergencies.[41]

Iowa and New Mexico limit the use of electronic meetings to times when "meeting in person is impossible or impractical" and require that public access be provided to electronic meetings "to the extent reasonably possible."[42] Virtual meetings are limited to emergencies in Tennessee and Texas.[43] And, except in cases of emergency, no more than half the meetings of a public body may be conducted through videoconferencing in Nebraska.[44]

Oklahoma limits the use of virtual meetings to certain specifically enumerated boards and requires that all members of the government body and the public be able to see and hear each other.[45]

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[34] N.C. GEN. STAT. @ 143-318.13 (1995) (emphasis added); OR. REV. STAT. 192.670 (2) (1995).

[35] N.C. GEN. STAT. @ 143-318.13 (1995)

[36] CAL. GOV'T CODE @ 54953 (b) (1) (1996).

[37] S.D. CODIFIED LAWS ANN. @ 1-25-1 (1996); Atty Gen. Op. No. 89-35 (1989).

[38] CAL. GOV'T CODE @ 11123 (b) (1996).

[39] VA. CODE ANN. @ 2.1-343 (Michie 1996).

[40] VA. CODE ANN. @ 2.1-343.1 E (Michie 1996).

[41] VA. CODE ANN. @ 2.1-343.1 F (Michie 1996).

[42] IOWA CODE @ 21.1, 21.8 (1) (a) (1995); N.M. STAT. ANN. @ 10-15-1 (Michie 1996)

[43] TENN. CODE ANN. @ 8-44-108 (1996); TEX. GOV'T. CODE @ 551.125 (1996)

[44] NEB. REV. STAT. @ 84-1411 (1996).

[45] OKLA. STAT. tit. 25 @ 307.1, 304.7 (1995).

Implied Allowance

Two state statutes suggest that the use of information technologies is allowed. Oddly, North Dakota's open government meetings code fails to mention electronic meetings except to say that the state's notice requirements also apply to "conference call meetings."[46] Under Ohio law, electronic extension of physical meetings appears to be legal because the law stipulates that members attending meetings through communications equipment are not considered present and may not vote.[47] In addition, public meetings are defined as "*any*prearranged discussion of the public business of the public body by a majority of its members."[48]

Contextual Prohibition

Massachusetts law includes no reference to meetings by telephone, computer, video conferencing, or other electronic means.[49] However, the state law's definition of a meeting as a "corporal convening" suggests that the law excludes all non-physical methods of conducting the business of government bodies.[50]

Interpretations of Statutory Provisions

Even when state statutory provisions on the use of information technologies and virtual meeting are relatively clear and unambiguous, advisory opinions and case law interpretations have shaped the laws differently in different states. In Alaska in 1994 the state supreme court ruled in *Hickel v. Southeast Conference* that Alaska's law *permits* but does not require government agencies to use teleconferencing to facilitate public access to meetings of government agencies.[51] The following year, however, an attorney general opinion protected public access to teleconferenced meetings by ruling that board members who participate in meetings by telephone must be at publicly noticed teleconferencing facilities unless this causes "undue hardship."[52]

In 1993, the California Supreme Court looked to the plain meaning of its open meeting law to rule that exchange of information by letter did not constitute a meeting and such a non-public exchange did not violate the open meetings requirement unless the board had a "concerted plan to engage in collective deliberation on public business."[53]

The Kansas statute, which also appears to broadly approve virtual meetings, was interpreted by the state supreme court in 1994 not to apply to meetings by telephone call.[54] In *State ex rel Stephan v. Board of County Commissioners of Seward*, the court adopted the reasoning of a 1983 Virginia Supreme Court opinion ruling that "[a] telephone conference call does not qualify" as a meeting under this statute.[55]

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[46] N.D. Cent. Code @ 44-04-20 (1995).

[47] Ohio Rev. Code Ann. @ 121.22 (C) (1996).

[48] Ohio Rev. Code Ann. @ 121.22 (B) (2) (1996) (emphasis added).

[49] All state statutes, attorneys general opinions, and case law were searched on Lexis/Nexis during late 1996 for references to "telephon** or interactive or electronic or telecommunication* or computer or teleconferenc*** or two-way or communication equipment".

[50] Mass. Ann. Laws ch. 39 @ 23B (Law. Co-op. 1996).

[51] 868 P.2d 919 (Alas. 1994).

[52] 1995 Alas. AG LEXIS 52 (Aug. 21, 1995) .

[53] Roberts v. City of Palmdale, 5 Cal.4th 363 (1993)

[54] State ex rel. Stephan v. Board of Cty. Commrs. of Seward, 254 Kan. 446 (1994).

Moreover, the Kansas court said, because "there is no common-law right of the public or press to attend the meetings of governmental bodies[, ...] in the absence of a statutory prohibition, there can be no legal or constitutional objection to a governmental body transacting certain business by means of a telephone conference call. If such a call is prohibited, the prohibition must be found in legislative enactment. It cannot be done by judicial fiat."[56]

One justice dissented from the majority's interpretation that the law defined meetings as "face-to-face relationships" and argued that any "prearranged" communication should constitute a meeting.[57] The following year, a Kansas attorney general ruled that simultaneous interactive communications via computer may constitute an illegal meeting under the act.[58]

In Georgia, an attorney general ruled in 1994 that a board member participating in a teleconference is present to constitute a quorum.[59] The opposite conclusion was reached by an attorney general in Texas in 1994 but apparently reversed in 1995.[60] The earlier ruling viewed telephone participation in meetings as an illegal means to circumvent the statutory requirement that deliberations be open to the public.[61]

A 1979 superior court ruling in Connecticut and a Montana Supreme Court ruling in 1980 each held that discussion on telephone extensions or speaker phones constituted a meeting and must fulfill statutory requirements for public access and notice.[62] A 1991 opinion of the attorney general of New Mexico found that telephone votes by boards violate the open meeting act.[63]

A 1995 attorney general opinion suggested that North Dakota's imprecise law allows boards to conduct virtual meetings because "it is a matter of common knowledge and everyday experience that a variety of public and private meetings are now held both by telephone and by interactive audio visual means."[64] And in South Dakota, a 1994 attorney general ruling encouraged county boards of commissioners to make broad use of the state's provision for teleconferencing as necessary.[65]

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[55] Roanoke School Bd. v. Times-World, 226, Va. 185 (1983)

[56] State ex rel. Stephan v. Board of Cty. Commrs. of Seward, 254 Kan. 446, 450 (1994).

[57] Id. at 452 (Six, J., dissenting).

[58] 1995 Kan. AG LEXIS 2 (Jan. 23, 1995).

[59] 1994 Ga. AG LEXIS 19 (March 16, 1994).

[60] 1995 Tex. AG LEXIS 96 (Aug. 30, 1995) (simultaneous physical presence of quorum not necessary to constitute meeting); 1994 Tex. AG LEXIS 68 (March 24, 1994) (board members may not attend meetings or vote by telephone); 1994 Tex. AG LEXIS 65 (March 18, 1994) (board members may not attend meetings or vote by live video transmission or teleconference call except through express authorization).

[61] 1992 Op. Atty Gen. Tex. LEXIS 31 (finding that openness "may not be avoided by avoiding the physical gathering of a quorum in one place at one time"). *See also* Hitt v. Mabry, 687 S.W.2d 791 (4th D. Ct. App. Tex. 1985) (requiring physical assembly of boards and finding telephone polling of members violated state statute).

[62] Giordano v. Freedom of Information Comm., 36 Conn. Supp. 117 (Sup. Ct., Jud. Dist. Ansonia-Milford, 1979); Bd. of Trustees, Huntley Project School Dist. No. 24, Worden v. Bd. of Cty. Comm'rs of Cty. of Yellowstone, 186 Mont. 148 (1980).

[63] 1991 Op. Atty Gen. N.M. 12 (1991).

[64] 1995 N.D. AG LEXIS 86 (Oct. 11, 1995).

Statutory Silence

Twenty-two states fail to address the subject of information technologies or virtual meetings. The silent open meeting statutes are: Alabama, Arizona, Arkansas, Delaware, Florida, Idaho, Illinois, Indiana, Louisiana, Maine, Maryland, Michigan, Minnesota, Mississippi, New Hampshire, New York, Pennsylvania, Washington, Washington, DC, West Virginia, Wisconsin, and Wyoming.[66]

Few of these laws define "meeting" in a way that clarifies the law's application to virtual meetings. For example, the Arkansas statute defines a meeting as a meeting of a quorum.[67] In Arizona, Delaware, Illinois, or Indiana, a meeting is a gathering of members.[68] In Florida and Washington, meetings are all meetings "at which official acts are to be taken."[69] Idaho, Maryland, Michigan, New Hampshire, New York, Rhode Island, West Virginia, and Wisconsin define legal meetings as the "convening" of members without reference to whether the convening is physical or electronic.[70] Mississippi and Wyoming define meetings as "an assembly" of board members.[71] The meaning of such laws must be determined through opinions of the courts and attorneys general.

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[65] 1994 S.D. AG LEXIS 8 (Dec. 28, 1994).

[66] ALA. CODE @ 13A-14-2 (1996). But see ALA. CODE 11-92A-9 (f) (1996) (permitting County Industrial Development Authorities to conduct business through teleconferences and electronic communications); ARIZ. REV. STAT. ANN. @ 38-431 et seq. (1996); ARK. CODE ANN. @ 25-19-102 et seq. (Michie 1995); DEL. CODE ANN. tit. 29 @10002 (1995); FLA. STAT. ch. 286.011 (1996); IDAHO CODE @ 67-2340 - 67-2343 (1996); ILL REV. STAT. tit. 5 @ 120/1 et seq. (1996); IND. CODE ANN. @5-14-1.5-2 (Burns 1996); LA. REV. STAT. 42:4 - 42:5 (1996); ME. REV. STAT. tit. 1 @ 401 et seq. (1995); MD. STATE GOV'T CODE ANN. 10-501 et seq. (1996). But see MD. STATE GOV'T CODE ANN. 10-211 (1996) (allowing administrative procedure hearings to be conducted by electronic means effective June 1, 1996); MICH. STAT. ANN. @ 4.1800 et seq. (1996); MINN. STAT. @ 471.705 (1996); MISS. CODE ANN. @ 25-41-1 et seq. (1996); N.H. REV. STAT. ANN. 91-A:1 (1995); N.Y. PUB. OFF. LAW @ 101 et seq. (Consol. 1996); 65 PA. CONS. STAT. 273 (1996); WASH. REV. CODE ANN. @ 42.30.010 et seq. (1995); D.C. Code Ann. @ 1-202, 1-1504 et seq. (1996); W. VA. CODE @ 6-9A-1 (1996). But see W. VA. CODE 15-5-4 (d), 18-30-5 (permitting emergency use of electronic meetings for the state Disaster Recovery Board and allowing members of the Higher Education Tuition Trust to join quorums through telephonic equipment); WIS. STAT. @ 19.81 (1994); WYO. STAT. @16-4-401 et seq. (1996). But see WYO. STAT. @ 9-7-104, 21-16-703 (1996) (permitting Community Development Authority board and Higher Education Assistance Authority boards to conduct emergency electronic meetings).

[67] Ark. Stat. Ann. @ 25-19-103 (1995).

[68] ARIZ. REV. STAT. ANN. @ 38-431.01 (1996); DEL. CODE ANN. tit. 29 @10002 (e) (1995); ILL REV. STAT. tit. 5 @ 120/1.02 (1996); IND. CODE ANN. @5-14-1.5-2 (Burns 1996).

[69] FLA. STAT. ch. 286.011 (1) (1996); Wash. Rev. Code. Ann. @ 42.30.020 (1995).

[70] Idaho Code @ 67-2341 (1996); Md. State Gov't Code Ann. @ 10-502 (g) (1996); Mich. Stat. Ann. @ 4.1800 (12) (b) (1996); N.H. Rev. Stat. Ann. 91-A:2 (1995); N.Y. Pub. Off. Law @ 102 (1) (Consol. 1996); R.I. Gen. Laws @ 42-46-1 (1995); W. Va. Code @ 6-9A-2 (1996); Wis. Stat. @ 19.82 (1994).

[71] Miss. Code Ann. @ 25-41-3 (1996); Wyo. Stat. @ 16-4-402 (1996).

Interpretations of Silent Statutes

In ten states, neither attorneys general opinions nor court rulings provide guidance on how the silent open meeting laws should be applied to information technologies and virtual meetings.[72] Opinions in the remaining states suggest fundamental differences in states' views on how best to improve public access to government while minimizing opportunities for governmental secrecy.

In the absence of statutory provisions, courts and attorneys general in several states have approved the use of information technologies and virtual meetings. Five states have ruled that their laws broadly permit virtual meetings; three states interpret their laws to limit the ways in which information technologies may be used to conduct public business; four state rulings prohibit use of information technologies; and one state has ruled that virtual meetings are not covered by the state law.

In Arizona, a 1991 ruling of the attorney general held that state open meeting law broadly permits boards to meet using information technologies "when no reasonable alternatives exist."[73] Similarly, in a 1995 case of first impression, an Illinois appellate court ruled that the state's act does not require members of government boards to be in each other's physical presence and permits boards to use their discretion about how to convene meetings.[74] The court permitted teleconferenced meetings and said, "[T]he absence of specific authority in the act to conduct board meetings by telephone conference does not indicate a legislative intent to prohibit such meetings."[75]

The Illinois court quoted extensively from a 1992 Pennsylvania Supreme Court ruling that also found a "telephone conference call using a speaker telephone in a meeting open to the public" was legal under the Pennsylvania statute.[76] The court said the crucial element in meeting the provisions of the Pennsylvania open meetings law was the ability of the public "to personally observe the deliberation, policy formation and decision making," not the physical assembly of the members of the public board.[77]

Arkansas rulings have also focused on the need for non-physical meetings to permit public access. Relying on a 1985 Arkansas Supreme Court ruling that overturned a non-public vote taken by a telephone poll of board members,[78] a 1994 state attorney general opinion said telephone discussions of two or more members of a board are meetings and must comply with all provisions of the act.[79]

In a 1996 opinion, a Maryland attorney general focused on the simultaneity of information exchange as the critical factor in determining whether information technologies fall within or outside the purview of the state statute. Comparing e-mail to traditional mail, the ruling said e-mail does not constitute a meeting because there is no

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[72] *See* Alabama, Idaho, Indiana, Massachusetts, Minnesota, New Hampshire, Washington, Washington, D.C., West Virginia, and Wyoming.

[73] 1991 Op. Atty. Gen. 107 (R91-036).

[74] Freedom Oil Co., v. Illinois Pollution Control Bd., 275 Ill. App.3d 508, 655 N.E.2d 1184 (1995).

[75] Id. at 514.

[76] Babac v. Pennsylvania Milk Marketing Board, 531 Pa. 391, 393 (1992).

[77] Id. at 395 n. 4.

[78] Rehabilitation Hospital Services Corp. v. Delta-Hills Health Systems Agency, 285 Ark. 397, 687 S.W.2d 840 (1985).

[79] 1994 Ark. AG LEXIS 323 (July 11, 1994)

"convening of a quorum of a public body."[80] However, "[i]f the members of a public body are able to use e-mail for "real time" simultaneous interchange, ... [this] can constitute a 'meeting'" subject to all legal requirements.[81]

Several states approve the use of information technologies as a means to expand or extend physical meetings. For example, a 1994 Florida attorney general opinion said the law allowed participation through interactive video or telephone of a member unable to physically attend a meeting so long as the physical meeting complies with the requirements of the Government in the Sunshine Law.[82] In 1995, the Florida Supreme Court also recognized both the "growing use of electronic mail" by government officials and the importance of public access to the information exchanged through this medium.[83] The court amended state rules on judicial records to include "official business information transmitted via an electronic mail (e-mail) system."

In Michigan, board representatives may attend meetings by interactive television as a means to "enhance the public's access to the meetings."[84] In the 1995 ruling, the attorney general cited *Goode v. Department of Social Services*, in which a state appellate court upheld a teleconferenced meeting and ruled that the open meeting law did not require all members to be physically present at a legally assembled physical meeting.[85]

Also in 1995, a Mississippi attorney general ruled that "a telephone conference or intercom system may be used by a board member to participate in a lawfully called meeting provided there is a quorum physically present and it is done in a manner that will allow the public in attendance to hear all discussion and deliberation."[86] Ten years earlier, the Mississippi Supreme Court had said use of technologies should not be permitted to "circumvent the [open meeting] act by preventing public disclosure of deliberation and conduct of business."[87]

Indeed, other states interpreting silent statutes have reasoned that the compelling concern with information technologies is the need to prevent electronic circumvention of government openness. In a 1992 ruling, the Louisiana attorney general held that telephone contact, whether serial or simultaneous, among a majority of a local ethics board illegally circumvented the state open meetings law.[88] A Louisiana appeals court had ruled in 1976 that the state open meeting law required that a legal meeting be convened at "a specific time and place."[89] In Maine, the attorney general said unequivocally in 1984 that "the practice of conducting 'public proceedings' over the telephone is inimical to the fundamental purpose" of open meetings legislation and should only be considered in cases of emergency.[90] And a New York attorney general said polling of board members' opinions by telephone violates the open meetings law because "such a procedure limits the ability of the public to observe the deliberations of the public body."[91]

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[80] 1996 Md. AG LEXIS 18 (May 22, 1996).

[81] Id.

[82] 1994 Fla. AG LEXIS 73 (June 15, 1994). *See also* 1992 Op. Att'y Gen. Fla. 92-44.

[83] In re Amendments to Rule of Judicial Admin. 2.051, No. 83,927, 651 So.2d 1185, 1190 (Fla. 1995).

[84] 1995 Mich. AG LEXIS 7 (Feb. 13, 1995)at *6.

[85] 143 Mich. App. 756 (1985).

[86] Miss. AG LEXIS 600 (Aug. 31, 1995)at *3.

[87] Bd. of Trustees of State Institutions of Higher Learning v. Mississippi Publ. Corp., 478 So.2d 269, 278 (Miss. 1985).

[88] 1992 La. AG LEXIS 228 (92-166).

[89] In re Mix Board of Supervisors of Elections, 337 So.2d 533, 536 (4th Cir. App. Ct. La. 1976. *See also* Brown v. East Baton Rouge Parish School Board, 405 So.2d 1148 (1st Cir. App. Ct. La. 1981).

The most relevant Rhode Island ruling was issued in 1988, when the attorney general said that serial telephone calls among board members did not violate the open meetings act when "no substantive discussion or vote ... took place over the phone."[92]

The Wisconsin Supreme Court in 1976 held that subquorum or serial meetings are illegal "where there is present an intent to avoid the statute, plus the ability to control or determine a decision to be made at the public session of the committee or board, ... [or] a deliberate conspiring to violate the open meeting requirement."[93] Thus, the court found that the intent and the ability to violate the law are critical factors in determining whether non-simultaneous and non-physical meetings are prohibited under state law.[94]

In 1996, the Delaware attorney general concluded that state law did not cover telephone polling of board members. The attorney general said such polls did not violate the freedom of information act because they did not fall within the law's definition of a meeting as a gathering of a quorum.[95]

Statutory Prohibition of Electronic Circumvention

Nevada and Rhode Island statutes neither grant nor deny permission for virtual government meetings but expressly prohibit the use of electronic communications to circumvent the state's commitment to open government.[96] Other states with specific anti-electronic circumvention clauses are: Hawaii, Nebraska, Oklahoma, South Carolina, and Tennessee.[97] Louisiana also would appear to prohibit electronic circumvention with its broad clause that bans chance or social gatherings and "any other means to circumvent" the state's open government provisions.[98]

Findings

Roughly half of all current state open meeting statutes fail to address the use of information technologies in the conduct of public business, and one-fifth of the states provide neither statutory nor case law guidance on virtual meetings. Only twenty-six states have expressly legislated the use of information technologies by government bodies. One state law requires government meetings to be corporal. Rulings in some of the remaining state suggest that the laws do apply to virtual meetings.

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[90] Maine 1984 Me. AG LEXIS 4 (84-25).

[91] 1992 N.Y. AG LEXIS 62 (92-F6).

[92] 1988 R.I. AG LEXIS 3017 (1988).

[93] Lynch v. Conta, 71 Wis.2d 662 (1976).

[94] Id. at 703.

[95] 1996 De. AG LEXIS 21 (May 30, 1996).

[96] NEV. REV. STAT. ANN. @ 241.030 (4) (1995); R.I. GEN. LAWS @ 42-46-2, 42-46-5 (b) (1996).

[97] HAW. REV. STAT. @ 92-5 (b) (1996); NEB. REV. STAT. @ 84-1410 (4), 84-1411 (e)(1996); OKLA. STAT. tit. 25 @ 306 (1996); S.C. CODE ANN. @ 30-4-70 (b) (1996); TENN. CODE ANN. @ 8-44-102, 8-44-108 (c) (1996).

[98] LA. REV. STAT. 42:5 (b) (1996).

When statutes, case law, and attorneys general opinions are examined as a whole, eleven states have taken no legal position on the status of virtual government meetings. Five states prohibit virtual meetings, and thirty-five states allow the use of information technologies to varying degrees. In addition, eight states expressly prohibit the use of information technologies to circumvent openness in government.

The differences in the legal status of virtual meetings among states are not reflective of differences in express statutory commitment to citizen access and participation in government. Nor do regulated bans on technological circumvention of open government suggest a fear of technologies and a tendency to prohibit or narrowly constrain the conduct of virtual meetings. Further study might examine state legislative debates in an attempt to determine the intent of various regulatory postures. This study can only suggest that different states provide greater or lesser opportunity for electronic citizen access to government and protection against government evasion of openness through information technologies.

Recommendations

The increased use of information technologies by government agencies should not be ignored. State laws designed to facilitate citizen participation and checking on government must recognize the new and changing processes of government. Although strong policy statements in support of open government are essential, they are not sufficient. All state open government laws should include provisions recognizing the use of information technologies in the conduct of government business and providing for citizen access to these information systems.

States need not, and should not, adopt specific chapters on virtual meetings. Virtual meetings should be treated no differently from physical meetings. States should reconceptualize "meeting" to incorporate virtual meetings and to subject them to all the requirements imposed on physical meetings. Accordingly, meetings may be: Any simultaneous or serial exchange of information related to public business or any action of two or more members of a public board through any means. Under this definition, boards may do anything at a virtual meeting that may be done at a physical meeting, and the law makes no distinction between physical and virtual attendance of board members.

State laws also should prohibit any differences in citizen access to physical or virtual meetings. State statutes should require all meetings, virtual or physical, to provide public notice and to permit board members and the public to *exchange* messages. Public participation is devalued by statutes that protect only the right of citizens to see and/or hear meetings. Public involvement is jeopardized further by statutes the permit boards to levy fees on citizens who attend and participate through information technologies.

State laws should ensure free public access to the systems of virtual meetings both through dial-up connections to virtual government meetings and through public access terminals or screens in city halls, public libraries, and other public locations. If virtual meetings are textual or audio only, government agencies should be required to provide copies of all printed or visual materials at all public access sites and, to the extent possible, on-line.

Under these guidelines, there is no reason to limit the number or frequency of virtual meetings conducted by an agency. However, states should adopt express prohibitions with severe penalties for circumvention of the act. Violations should be determined on the basis of the effect of the challenged action, not the intent of board members. Finally, exemptions from statutory requirements in cases of emergency should be clearly stipulated and narrowly construed.

Statutory Provisions on Virtual Meetings

Broad Allowance	**Limited Allowance**	**Implied Allowance**	**Implied Prohibition**
Alaska	California	North Dakota	Massachusetts
Colorado	Iowa	Ohio	
Kansas	Nebraska		
Connecticut	New Mexico		
Montana	Oklahoma		
Kentucky	South Dakota		
Georgia	Tennessee		
Hawaii	Texas		
Missouri	Virginia		
New Jersey			
North Carolina			
Oregon			
South Carolina			
South Dakota			
Utah			
Vermont			

Interpretations of Statutory Provisions

	Case Law	**Attorney General**
Alaska	electronic meetings not required	electronic meetings require public access and notice
California	law not applicable to exchange of letters	
Connecticut		telephone meetings require public access and notice
Georgia		teleconference participants contribute to quorum
Kansas	law does not prohibit teleconferencing	real-time computer interactions require public access and notice
Montana		telephone meetings require public access and notice
New Mexico		prohibits telephone votes
North Dakota		allows virtual meetings
South Dakota		encourages use of teleconferencing
Texas		teleconference participants contribute to quorum

Statutory Prohibition of Circumvention

Hawaii
Louisiana
Nebraska
Nevada
Oklahoma
Rhode Island
South Carolina
Tennessee

Statutory Silence

Alabama
Arizona
Arkansas
Delaware
Florida
Idaho
Illinois
Indiana
Louisiana
Maine
Maryland
Michigan
Minnesota
Mississippi
Nevada
New Hampshire
New York
Pennsylvania
Rhode Island
Washington
Washington, DC
West Virginia
Wisconsin
Wyoming

Interpretations of Silent Statutes

	Case Law	**Attorney General**
Arizona		broadly permits virtual meetings
Arkansas		broadly permits virtual meetings
Delaware		virtual meetings not covered by state law
Florida	recognizes important government role of e-mail	permits technologies to extend physical meetings
Illinois	permits discretionary use of non-physical meetings	
Louisiana		prohibits telephone meetings
Maine		prohibits telephone meetings
Maryland		applies to real-time exchange, not e-mail
Michigan		permits technologies to extend physical meetings
Mississippi		permits technologies to extend physical meetings
New York		prohibits telephone meetings
Pennsylvania		telephone meetings require public access and notice
Rhode Island		allows serial phone calls but not votes
Wisconsin	prohibits circumvention	

Humor as a Resource in Constructing Scientific Knowledge and Ignorance

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Most previous rhetorical studies in the sociology of knowledge (SSK) and in the developing sociology of scientific ignorance (or SSI) have concerned themselves with the *serious* domain. This paper builds on the few existing sociological studies of *humor* in science, reinterpreting some of that evidence and adding some new evidence to argue that scientists sometimes use humor as a rhetorical resource to accomplish the constructions of both knowledge and ignorance.

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Humor as a Resource in Constructing Scientific Knowledge and Ignorance

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A basic tenet of the sociology of scientific knowledge (SSK) is that scientists engage in considerable labor, much of it rhetorical, to construct themselves as competent and their research findings as knowledge. Labor is assumed to be necessary because neither competence nor knowledge are the givens that they sometimes appear; competence must be cultivated out of natural abilities, practice, words and other social resources, and individual scientists' claims about nature must be supported and solidified by evidence offered by the right people saying the right things in the right places before they come to be accepted as knowledge (cf., Pinch,1990).

In a recent symmetrical move, scholars interested in developing a sociology of scientific ignorance or SSI (cf, Smithson, 1989; Stocking and Holstein, 1993) have argued that scientists, along with others, engage in rhetorical labor to construct scientific ignorance, sometimes with respect to their own work (as when they construct "knowledge gaps" to stake out problems), and with respect to the work of others (as when they claim another scientist's "fact" is really an "artifact").[1] Again, the assumption is that labor is necessary because ignorance is not an automatic given, but the outcome of a complex process involving both natural and social factors.

With some notable exceptions (c.f., Mulkay and Gilbert, 1982, Mulkay, 1987; Pinch, 1995; Travis, 1980), most of the previous rhetorical work in both SSK and the developing SSI has concerned itself with labors in the *serious* domain. This paper builds on the few existing sociological studies of humor in science, reinterpreting some of that evidence and adding some new evidence to argue that scientists sometimes use humor as a rhetorical resource to accomplish the constructions of both knowledge (and competence) and ignorance (and incompetence).

The seriousness of humor in science

Humor in science is not the trivial subject that it might at first appear. As Mulkay has pointed out in his comprehensive sociological treatment of humor (Mulkay, 1988), humor not only entertains, but like serious discourse it can do serious work.[2] Most interestingly, it appears to do so in a way that serious discourse can not. Whereas serious discourse works to construct a congruous and unitary reality (a reality taken to exist independent of subjective interpretations, and shareable by all those who do not succumb to errors of perception or reporting), humor works to undermine that construction; indeed, humor *arises* out of the sudden juxtaposition of a reality that appears congruous and unified, with an alternative and often contradictory reality.

Consider an example outside the realm of science, the humor in a card designed for American employers to give to their secretaries on Secretaries Day: *The cover of the car is a line drawing of five males in business suits sitting around a conference table staring at a telephone that would normally be manned by a secretary. They look befuddled. "I* *think you're supposed to pick it up when it rings..." says one. "The whole thing?" asks another. "No--just the receiver," responds a third. Under the cartoon are the words, in boldface type, "The Day the Secretary Stayed Home."*

The humor here works to undermine the everyday construction of the employer as competent and in charge. It does serious work for the sender by reminding both the secretary and himself of an alternative reality (namely that the employer might not be so competent or in charge, if left to his own devices) and so communicating that the secretary is indispensable. [3]

Serious discourse also can work to deconstruct "reality" and construct alternatives, of course, but humor offers interpretative possibilities that can lighten any negative consequences. Unlike serious discourse, for example, humor can allow a person to make criticisms of others without being held accountable; if the target of the disparaging humor objects, the jokester can always suggest she or her was "just kidding." Humor can also allow a person to widen the range of acceptable discourse to include normally constrained topics of conversation. As Mulkay explains, with humor "what before were problems to be overcome are now resources to be exploited, added to, and enjoyed." (215)

Mulkay describes a number of studies, outside of science, that document the serious work that humor, with its interpretative possibilities, can perform. He points to an unpublished study (Drew, 1986) in which teasing was shown to allow people to correct and reprove others without really incurring the open disagreement or antagonism that serious discourse might entail. "Teasing" Mulkay writes, "is a devise (sic) for reformulating others' speech and action, and thereby proposing an alternative reality without seriously doing so." (Mulkay, 1988, p 79)

In another study (Emerson, 1973), hospital patients were found to use joking strategically, to raise concerns about the likelihood of death, the incompetence of staff and the personal indignities of medical care. Humor, says Mulkay referring to this particular study, "allows patients to introduce prohibited topics...(and) enables staff and patients to interact in relation to such topics" (Mulkay, 1988, p. 82)

In yet another study (Walle, 1976) customers at an American all-night diner used humor to exchange "coded messages about sexual availability" (Mulkay, 1988, p. 87) -- again without incurring the kind of risk one might incur in serious discourse.

Humor discussed in prior research on humor and science, and gathered in anthologies of science humor and other sources, including personal observation and communications with scientists, has led me to conclude that scientists, too, use humor for serious work. Indeed, it is the argument of this paper that scientists sometime use humor

--in a defensive way, to deflect perceptions and claims (both potential and actual) that could threaten their presentations both of themselves as competent and of their research findings as knowledge, and

--offensively, to case doubt on others' competence or knowledge claims, thereby working to construct them as incompetent and/or their research findings as dubious knowledge or ignorance.

Humor labors to accomplish these objectives, I will argue, by presenting alternatives to perceptions and claims that might threaten the appearance of knowledge and competence that scientists work to construct, and its appeal lies in the fact that it does so while simultaneously allowing scientists to "make light" of these alternatives. Making light of challenges to knowledge and competence can serve several functions for scientists. It can help the *targets* of such challenges to deflect them (while appearing to remain unruffled or above the fray); it also can help *those making the threatening claims* to escape some accountability for their criticism (thus enabling a widening of critical possibilities).

Humor used to deflect threats to scientific competence and knowledge

In Mulkay's view, the social world that any of us labors to construct is always in danger of being deconstructed by others' interpretations of reality and by our own changing interpretations as we move from one social position or social context to another. Given what scholars have learned in the history and sociology of science in recent years, the scientists' social world should be no exception. Indeed, the threats to scientists' claims to knowledge and competence by other scientists have been well documented (Gilbert and Mulkay, 1984, and Myers, 1990). Studies also suggest that scientists experience threats as they move from positions of expertise within their own areas of specialization to positions of in which their expertise is liable to be less useful or suspect (cf. Wynne, 1989). The fact that ignorance itself is often an *explicit* subject for humor among scientists would seem to suggest that ignorance (in the sense of absence of knowledge or competence) is widely recognized as an alternative reality that scientists must somehow manage as they labor to construct their social world.

Mulkay himself presents two instances of humor in science that might be interpreted as scientists' strategic use of humor to manage perceived threats to their constructions of themselves as competent. In both cases, the humor, made during events associated with the award ceremonies for the Nobel Prize, explicitly concerns ignorance or perceived incompetence.

A Nobel Laureate jokes about his ignorance of medicine. In one of these instances (described in Mulkay, 1988), one of two scientists honored with the Nobel Prize in Medicine for their work on the development of computerized tomography, noted that

> *There is an irony in this award, since neither Hounsfield nor I is a physician. (One is an engineer and one a physicist). In fact it is not much of an exaggeration to say that what Hounsfield and I know about medicine and physiology could be written on a small prescription form!* (p. 161).

Mulkay interprets this humorous remark as example of the self-deprecation that is a ritualistic aspect of the discourse of award winners at the Nobel ceremonies. Normally in these events, Nobel Laureates scrupulously avoid self-praise, they downgrade their own in these events, Nobel Laureates scrupulously avoid self-praise, they downgrade their own achievements, return compliments to the Nobel Foundation and its founder, and reassign praise to colleagues, families, and wider social groupings (Mulkay, 1988, p. 160). Usually such self-deprecation is serious. However, as Mulkay points out, in this particular case, "if this laureate had said that he knew nothing about physiology or medicine and could not properly be given the prize under this heading, his very participation in the ceremony would have been put in question" (p. 162). By using *humor* the laureate managed "to deny his competence in the area for which the prize is being awarded, without producing these serious consequences" (p. 162). He managed, in other words, to acknowledge an "alternative reality" to the reality of knowledgeability constructed by the Nobel committee, without that alternative being taken seriously.

Mulkay's interpretation explains why the laureate might have chosen to speak humorously when mentioning his own illiteracy in medicine. It does not, though, explain why the laureate chose to reveal his illiteracy in the first place. Obviously without direct evidence of motivation, we can only surmise.

One plausible explanation, consistent with our developing reasoning on the use of humor in the social construction of knowledge and ignorance, is that the new laureate and his co-winner perceived their medical illiteracy as a potential threat to the Nobel committee's construction of them as worthy of one of the highest scientific prizes in medicine. Perhaps they themselves harbored doubts about their worthiness above other perhaps equally deserving scientists, many of them actively working in the field of medicine; more likely, they imagined that others -- especially when confronted with the extravagant praise of the recipients that is a standard part of the serious discourse of Nobel ceremonies -- would harbor such doubts. Indeed the scientist's use of the term *"irony,"* which is defined as "an incongruity between what is expected to be and what actually is " (see p. 683, *Collins Concise English Dictionary, Third Edition*), suggests this may have been the case.

This interpretation is consistent with psychologists' reasoning as to the motivations for using self-disparaging humor (Zillmann and Stocking, 1976); that is, people often use such humor as a kind of preemptive strike against real or imagined criticisms. Seen in this light, the laureate's humorous mention of their illiteracy would have served as a kind of rhetorical preemptive strike, *a way to acknowledge, make light of, and thereby defuse the "alternative reality" that their lack of medical expertise might raise in peoples' minds, including quite possibly their own.*

A Nobel laureate in economics jokes about economists. In an earlier work (Mulkay,1987), Mulkay describes yet another joke used during the Nobel ceremonies that is consistent with this reasoning. In this case, though, the scientist who made the joke appeared to be trying to defuse threats to his competence posed, not by his own ignorance of knowledge in the field in which he was being honored, but by prevailing stereotypes of economists.

The Nobel Laureate presented a cue that humor was to follow by saying "Permit me... to be less serious about economists for a moment. " Then he told the joke:

> *I have been asked: What do economists do? My reply is: When economists face disagreements, they appeal to a long-established, basic Law of Talk, which is, 'The more intelligent people are, the more certain they are to disagree on matters of social principle and policy, and the more acute will be the disagreement.' Herein lies the proof that economists are intelligent* (p. 255).

The humor of this joke depends on the audience knowing that economics often is stereotyped as the *dismal science*, and that economists, in turn, are stereotyped in some scientific quarters as practitioners so lacking in competence that they cannot achieve the consensus required to create genuine scientific knowledge. The laureate, obviously aware that many in the audience shared these stereotypes, or at least were aware of them, appears to have used humor in an attempt to defuse them.

As Mulkay points out in his own analysis of this joke, the punchline, *herein lies the proof that economists are intelligent,* is obviously intended not to be taken seriously; we are not expected to believe that economists, contrary to stereotype, are intelligent simply because they appeal to some spurious Law of Talk. At the same time, however, it is unreasonable to believe that the punchline is intended to convey that economists (and by implication the new Nobel laureate in economics) are incompetent and unintelligent. The deliberate interpretative ambiguity of the punchline, an ambiguity that is so much a part of humor, but less prevalent in serious statements, allows the laureate -- in Mulkay's words, "to deal with an awkward evaluative issue, in this case, the disciplinary standing of the economists and of the speaker..."

Put another way, in line with the thinking I am attempting to develop in this paper, it allows the laureate to accomplish what self-deprecating humor is so good at accomplishing -- that is, to make a "preemptive strike," to acknowledge the stereotype, but simultaneously make light of it. Not unimportantly, in so doing, the economist simultaneously reveals himself to be a person able to take (and make) a joke on himself -- a quality that psychologists and scientists in communications science have found can work to enhance attractiveness, particularly in those who are socially dominant (Zillmann and Stocking, 1976).

It might be argued, of course, that the Nobel laureates cited in Mulkay's work and in this paper were not using humor defensively as I have suggested. Rather, they were drawing attention to ignorance and stereotypes related to incompetence simply to be self-effacing as required of discourse by Nobel laureates (Mulkay, 1984) *and* to be entertaining... to lighten up otherwise serious event.

My own experience suggests that explicit mention of ignorance and incompetence, at least by dominant figures in academic settings where such mention is not expected, can simultaneously confer humility and give rise to laughter; interestingly, the latter is so even without resort to explicit "humorous" mode, suggesting that confessions of ignorance and incompetence by scientists, particularly eminent scientists who presumably are respected for their knowledge and competence, can amount to a "structural joke" as originally proposed by Douglas (1968, reprinted in Douglas, 1975) and discussed at length by Mulkay (1988, p 157+).[4]

Given the difficulty of interpreting humor that is explicitly about ignorance or incompetence in situations such as this, a more telling example of humor used to deflect threats to competence or knowledge claims, might be one that involves humor that makes no mention of either. Consider, for example, the case of an eminent American scientist who used neither ignorance nor incompetence, but a play on words to deflect threats to his claims of knowledge.

My account of this event is drawn from personal observation of the session and from communications with the scientist whose remarks were the target of the eminent scientist's humor.

B.F. Skinner deflects threats to his knowledge claims. Several years before his death, the eminent American psychologist B.F. Skinner served as the discussant at a special convention symposium commemorating the 50th anniversary of the publication of his famous work on operant conditioning, "The Behavior of Organisms." One of the participants, a much younger, less eminent scientist, posed a problem for Skinner's approach by contrasting the theoretical difficulties of independently defining Skinner's learning concepts with the obvious practical ability of Skinner to use operant techniques to rapidly and easily teach organisms apparently complex and difficult tasks, such as the playing of ping pong by pigeons.

At the theoretical level, the problem was that Skinner's concepts were defined in a completely interdependent fashion. The concepts of a reinforcer, discriminative stimulus, and response were undefined until they occurred together with an increase in rate of responding. However, at a practical level the ease with which Skinner was able to set up procedures to facilitate the occurrence of reinforcement suggested that he used accurate but unstated criteria to select candidates for the combination of stimuli, responses, and reinforcers that would produce the reinforcement effect. The young scientist closed by arguing that more explicit knowledge of the criteria Skinner used to identify potential candidates for stimuli, responses, and reinforcers would represent an important contribution to operant psychology.

In rising to reply to this criticism, Skinner joked that his work had been sadly misunderstood. There were no candidates at all in his approach because "...no one was running for office." To the delight of his audience, he continued in this tongue-in-cheek vein for several more observations. Thus, in replying to an apparently serious analysis of his work, Skinner used humor to deflect attention from the points rather than considering them in a more serious way. This eminent scientist purposefully reinterpreted the word "candidate" in a humorous fashion [he provided alternative humorous meaning -- nonsense, in this case], implying that he did not take the reanalysis of his approach seriously; nor should the audience.

In fact, Skinner never did address the substance of the younger theorist's criticisms, allowing the humor to dismiss the issue out of hand. The use of humor to terminate serious discussion of his criticisms, coupled with the enthusiastic response of the audience, caught the younger scientist off balance, and he found it difficult to know how to respond (personal observation and personal communication with the younger scientist).

Humor can be unsettling in that way, and difficult to refute; as we shall see when we discuss the use of humor to cast doubt on others' competence or knowledge claims (see below) , if the target of the humor objects to the joke the humorist (or others in his audience) can always accuse the target of lacking a sense of humor; alternatively,as we have already noted, the humorist can smile, shrug, or otherwise suggest that she or he was "just kidding."

Humor used offensively, to question others' scientific competence or claims to knowledge

As suggested earlier, scientists not only seem to use humor to deflect threats to their presentations of themselves as competent and their research findings as claims to knowledge, they also seem to use humor offensively, to question or debunk others' scientific competence of claims to knowledge.

Koestler, for example, in his book *The Act of Creation*, notes Galileo's hypothesis about earth's motion was "treated as a huge joke by a majority of Galileo's contemporaries" (Koestler, 1964, p. 96). Not only did Galileo's opponents *perceive* his hypothesis as humorous, but they also amplified this perception in ways designed to debunk the great scientist's interpretation of his observations. As one wag at the time put it (quoted in Koestler, p. 96, *and* in Mulkay, p. 55): *The disputes of Signor Galileo have dissolved into alchemical smoke. So here we are at last, safely back on solid earth, and we do not have to fly with it as so many ants crawling round a balloon.'*

More recently, Harvard University's John Mack and Temple University's David Jacobs -- to the obvious delight of the press -- were awarded the Ig Nobel Prize in psychology "for their stunning conclusion the people who believe they were kidnapped by aliens from outer space probably were." (Mirksy, 1994, 52). The Ig Nobels are awarded annually for achievements that "cannot or should not be reproduced." According to a popular account of the awards, "they're named after Ignatius "Ig" Nobel, supposedly a distance cousin of Alfred Nobel's, the big-deal prize founder and dynamic inventor of dynamite. Ig supposedly invented soda pop." (Mirsky, 1994, 52).

The scientists who presented the awards, including authentic Nobel laureates from MIT, apparently use the goofy ceremony not only to create fun for themselves but to publicly debunk scientists whose work they perceive as questionable, either because the findings are considered --as Galileo's were -- unbelievable, or because they are ludicrous for other reasons; in a number of cases they debunked scientists or findings that had received considerable press coverage during the year. [5]

Additional evidence concerning scientists' use of humor to question or debunk other's scientific competence or claims to knowledge lies in Pinch's recent examination of humor used by scientists at disciplinary gatherings during the cold fusion controversy (Pinch, 1995). In an analysis of videotaped remarks delivered at a meeting of the American Physical Society, Pinch identified numerous instances in which physicists used humor to debunk chemists' claims concerning the development of cold fusion. In one instance a physicist used humor to accuse chemists of being so incompetent that they had overlooked an obvious source of data contamination. After a lengthy techical discussion of the chemists' data, the physicist delivered the punchline: *I don't know how much radon there is in their lab, but I do know that they mine uranium in Utah.* The remark, like others identified in Pinch's study, met with considerable laughter among the physicists at the meeting.

In drawing conclusions from his research, Pinch argued that humor served a number of functions for the scientists he studied. It appeared to build rapport. As with Emerson's hospital study mentioned earlier (Emerson, 1973), humor also appeared to widen the range of permissible discourse. Had the physicist who criticized chemists in a joking fashion made his charges seriously, according to Pinch, he would have needed much more evidence. Thus, humor appeared in this study to function rhetorically to widen the discourse among scientists, to allow for more free-wheeling (or "speculative") critiques. Humor, Pinch concludes, allows scientists to breech the normal rules of scientific discourse, "to have their cake and eat it. They can accuse their opponents of breaking the scientific rules and at the same time break the rules themselves." (Pinch, 1995).

Summary and Discussion:

In this paper, I have applied Mulkay's general analysis of humor to the social construction of scientific knowledge (SSK) and ignorance (SSI), arguing that humor serves as a rhetorical resource in the construction of knowledge (and competence) and of ignorance (and incompetence). Specifically, I have proposed that scientists sometimes use humor to defend themselves against charges of ignorance or incompetence; they also use humor offensively at times, to construct others as incompetent, and their claims as ignorance. In making this argument, I have reinterpreted some of Mulkay's evidence, drawn on Pinch's path-breaking study of humor in the cold fusion controversy, and provided observations and examples gathered in my own research.

In a number of instances described in this paper, humor appears to have worked to construct knowledge and ignorance in ways that would have been much more difficult for serious discourse. In the case of cold fusion, for example, humor worked to widen the range of permissible criticism. In the case of B.F. Skinner debating a younger scientist, humor worked to terminate discourse by inviting the audience to not take seriously the younger man's challenges. Humor, in short, appears to have labored rhetorically to open up discourse in one instance and to close it down in the other. And in both cases, it seems to have enabled the scientists who used it to make and score "points" in a scientific conflict without having to invoke the kind of evidence or arguments that otherwise would have been required.

In at least one other case, that of the spoof Ig Nobel awards, humor labored to construct ignorance in a way calculated not only to entertain, but to attract coverage from the news media, which had given considerable press coverage to claims that the award-givers found preposterous. Humor labored, in short, to redirect *media* discourse in this case, discourse which as historians and sociologists are starting to discover, can be important in the construction of science and in the outcome of scientific controversies (cf., Phillips et al., 1991;Secord, 1989).

That scientists sometimes use humor to direct *existing* discourse should not be taken to be humor's only use in the social construction of scientific knowledge and ignorance, however. In other cases described in this paper, humor appears to have worked to acknowledge and deflect *potential* criticisms -- as preemptive strikes against possible challenges to scientists' competence. In short, it appeared to work to defuse possible challenges by others, and perhaps to enhance attractiveness.

Importantly, humor seems to have worked in these and in other instances to lighten up otherwise serious events and to enhance group solidarity; Pinch, for one, concluded that humor helped to build rapport among physicists in the cold fusion controversy. Thus, humor appears to work not only to direct discourse in scientific conflicts and deflect potential challenges to competence, it also appears to labor to bring scientists of like minds together. Put another way, in a way that is more familiar to sociologists and historians of science, humor appears to work to enlist allies, which as historians and sociologists in recent years have found, is important to the outcomes of the very social process of constructing knowledge and ignorance.

Indeed, it may be in enlisting allies that humor does what it can do best, and what serious discourse must labor much more diligently to achieve. This makes humor not a trivial subject for study at all, but a subject critical to those seeking to understand the mechanisms of successful recruitment.

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1. Smithson, in his book *Ignorance and Uncertainty: Emerging Paradigms,* has developed a working taxonomy of ignorance that includes simple absence of knowledge, but also uncertainty, confusion, inaccuracy, and irrelevance. In science, ignorance includes both uncertain knowledge, and the absent knowledge (knowledge gaps, for example), among other things. The assumption in the emerging sociology of scientific ignorance (SSI), which Smithson is developing along with Stocking (see Stocking and Holstein, 1993), is that just as scientists work to actively construct knowledge, they also work to actively construct ignorance Historian Robert Proctor, in his 1996 book, *Cancer Wars,* independently discusses the social construction of scientific ignorance, but his primary concern is with the construction of ignorance in public science, by trade associations such as the Tobacco Institute.

The social construction of incompetence, as distinct from ignorance, has not been formally examined by SSI scholars though allusions to the possibility of such examinations have appeared in the literature (see, for example, Stocking and Holstein, 1993, who mention, in a footnote, the possibility that one form of incompetence, scientific illiteracy, is socially constructed; Wynne, in an article in the 1995 *Handbook of Science and Technology Studies*, also mentions the social construction of illiteracy; in both cases, though, the construction of illiteracy is in the context of public understanding of science, as when non-scientists construct the public as scientifically illiterate or when non-scientists construct themselves as scientifically illiterate; it is not in the context of the construction of science itself).

2. It doesn't always, but that's another matter.

3. The sexist nature of this ad could be explored in more depth, but that would be beside the point I am attempting to make here.

4. One organized pattern of discourse, which is dominant, is contradicted by another pattern which is in some way hidden in the first, as discussed in Mulkay, 1988, p. 158.

5. Other award winners at the 1994 ceremony were James Nolan, coauthor of the paper "Acute Management of the Zipper-Entrapped Penis, " and Jay Schiffman, for "Autovision," a projection device that enables people to watch television while driving.

Effects of Alignment Advertisements: Brand Ads Containing Mention of Social Issues

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Effects of Alignment Advertisements:
Brand Ads Containing Mention of Social Issues

Abstract

Product ads are increasingly incorporating social issues in their messages. This study explores the effects of these hybrid messages, alignment ads, on viewers. Based on a literature review regarding the impact of congruency of information in a brand message and the evaluation of media channels, a pretest and two experiments test whether alignment ads are evaluated differently than brand ads. Findings indicate that placing an issue in an ad offers important advantages for advertisers, and that the congruency of the issue with the product further affects these results. Congruent issue information elicited more positive message evaluations than incongruent issue information.

The purpose of this research is to examine the effects of product advertisements that also promote social issues. A new hybrid of brand and public service advertising, these messages have not received systematic attention from researchers. A variety of issues are currently highlighted in advertising on behalf of major brands. Particularly salient are environmental themes ("greening" issues) as in ads for Downy fabric softener and Ford cars, and implications about appropriate lifestyles (interracial relationships and sexual orientation statements) as in ads for Benetton and Calvin Klein. In addition, Toyota promotes education, Anheuser Busch warns of underage drinking, and AT&T encourages family togetherness. Moreover, communication alignments are changing the nature of public service advertising. For example, Federal Express has aligned itself with the Red Cross on the basis of "being at the site of an emergency on time."

In 1993, Fram, Sethi and Namiki examined newspaper ads to explore the possibility that ads may shape public opinion. They identified 1,205 issues in 661 newspapers. The issues that were discussed in the ads ranged from environmental to political and from domestic to international. These researchers believed that "if used properly, (advertising) can be an ideal medium for bringing ideas to audiences." But, from the advertisers' perspective, a significant question remains concerning the audience's responses to brand information: Does the presence of an issue detract from brand information and negatively impact brand evaluation? Or, does the advertiser's involvement in a social cause benefit the brand?

As Fram et al (1993) found, ads contain a broad range of issues. How should an advertiser select an issue for a brand? Some brands and issues seem to have a natural "fit" (e.g. beer ads and drunk driving). Federal Express saw a meaningful fit between their service and that of the Red Cross. In this research, a readily perceived meaningful connection between issue and product is termed a high level of issue product congruency.

Incongruent information often prompts more elaborate and effortful processing (Berlyne, 1974; Bodenhouse and Wyer, 1985; Brewer, Dull and Lui, 1981; Childers and Houston, 1984; Erber and Fiske, 1984; Hastie, 1980; Houston, Childers and Heckler, 1987; Lau and Russell, 1980, McArthur 1981; Meyers-Levy and Tybout, 1989; Pyszcynski and Greenberg, 1981; Sujan, Bettman and Sujan, 1986; Taylor and Fiske, 1978; Weber and Crocker, 1983; Wong and Weiner, 1981). When presented with incongruent information, individuals try either to ignore the information or to reconcile the information to fit an existing schema. When neither of these strategies resolves the situation, the individual needs to modify the existing schema in an attempt to maintain consistency. Will perusing ads motivate people to make sense of incongruent information, or will congruent information produce more favorable responses? This research explores the role of issue-product congruence on viewers' information processing of ads.

Finally, alignment ads are not simply another form of brand advertisement. Two elements from the promotion mix, public relations and advertising, are integrated in this message form. This raises the question whether alignment ads are more persuasive than traditional forms of publicity.

Existing literature supports the idea that news messages are more credible than ad messages (Kotler, 1991; Reeves, Chaffee and Tims, 1985; Salmon, Reid, Pokrywczinski and Willett, 1985; Schudson, 1984). Schudson (1984) noted that "if an item appears as news, it has a legitimacy that advertising does not have. Consumers discount or discredit advertising, to some extent, because they know it to be from an interested source. A news story is not so easily discounted." While Salmon, Reid, Pokrywczniski and Willett (1985) found that messages in news format were perceived as less biased than in ad format, they also found that ad messages were perceived as more interesting and more persuasive. Therefore, these researchers suggest that ad messages are more likely to induce the desired behavior. This research will also compare news and advertising in an attempt to discover how audiences react to the same information presented in the two different forms.

Literature Review

This section reviews literature pertaining to the relevant concepts of issue-product congruency, and media channel (news vs. advertising).

Congruency of Issue Information in a Brand Message

Schemas are knowledge structures which organize concepts stored in memory. Schemas guide the processing of incoming information which may be congruent or incongruent to the schema. Incongruent information is that which contradicts prior expectations based on schematic knowledge.

Research in the fields of psychology, advertising and consumer behavior has investigated messages which contain incongruent elements. A variety of terminologies have been employed and used interchangeably in these studies, including: congruent/incongruent, expected/unexpected, and consistent/inconsistent.

There are three strategies that individuals can employ when presented with inconsistent information. The first of these is to simply ignore the incongruent information. Only information which is consistent with expectations is selected and given attention (Snyder and Swann, 1978; Swann and Read, 1981). However, if forced to use the inconsistent information, a second strategy is to assimilate the incongruency into an existing schema. The inconsistency can be either attributed to situational causes (Crocker, Binns and Weber, 1983; Kulick, 1983), or distorted to explain away the inconsistencies (Erber and Fiske, 1984). If neither of the two previous strategies can be used, there exists a third strategy. This strategy involves modifying the existing schema in attempts to maintain internal consistency. This requires the individual to spend more time processing the information. More attention is necessary, hence, more effortful and elaborative processing of the incongruent information (Berlyne, 1974; Bodenhausen and Wyer, 1985; Brewer, Dull and Lui, 1981; Childers and Houston, 1984; Erber and Fiske, 1984; Hastie, 1980; Houston, Childers and Heckler, 1987; Lau and Russell, 1980; McArthur, 1981; Meyers- Levy and Tybout, 1989; Pyszcynski and Greenberg, 1981; Sujan, Bettman and Sujan, 1986; Taylor and Fiske, 1978; Weber and Crocker, 1983; and Wong and Weiner, 1981).

Schema-congruency has been extensively examined with regard to its impact on recall of information. If incongruent items cannot be ignored quickly or quickly assimilated into a pre-existing schema, they prompt more elaborate processing and produce greater recall (Hastie, 1980; Hastie and Kumar, 1979). Only when incongruent information is extreme and the individual is required to make use of it , however, is recall of incongruent information superior to recall of congruent information (Johnson and Judd, 1983). In general, numerous researchers have found that information that is congruent with prior expectation or schema is better remembered (Bear and Hodum, 1975; Bem, 1981; Cantor and Mischel, 1977; Cohen, 1981; Greenwald and Sakumura, 1967; Higgins and Rholes, 1978; Hitchon and Chang, 1995; Howard and Rothbart, 1981; Picek, Sherman and Shiffrin, 1975; Rothbart, Evans and Fulero, 1979; Snyder and Uranowitz, 1978; Zandny and Terard, 1974).

Consistent with the literature on congruency and memory, it is expected that incongruent information will influence evaluation only when it is extreme and must be used. The presence of an issue in an ad that has no clear connection to the central brand-related messages is not expected to be perceived as extremely interesting or meriting extra processing. Rather, since congruent information reinforces the existing evaluative concept, it usually has a greater impact on evaluation (Anderson and Hubert, 1963; Dreben, Fiske and Hastie, 1979; Wyer and Srull, 1989). Therefore, it is expected that alignment ads containing mention of a congruent issue will produce a more favorable evaluation.

Combining Issue and Brand Information In Advertising or News

Over the years, advertising has been the target of numerous criticisms, including that is distasteful, insulting and offensive (Bauer and Greyser, 1968; Feldman, 1980; Greyser, 1972); that it persuades people into making unneeded purchases (Bauer and Greyser, 1968; Feldman, 1980; Greyser and Reece, 1971; Howard, 1994; Key, 1974); that it provides little or no substantive information (Daly, 1976; Resnik and Stern, 1977; Shimp and Preston, 1981); and that it is deceptive and misleading (Baker, 1968; Barksdale, Darden and Perrault, 1976; Feldman, 1980; Greyser and Reece, 1971; Preston, 1975). These criticisms are catalysts to the distrust of advertising cited by researchers (Durand and Lambert, 1985; Levitt, 1969; Welty, 1981).

Studies, although few in number, have explored the credibility of advertising (Becker, Martin and Tower, 1976; Lynn, Wyatt, Gaines, Pearce and VandenBergh, 1978; Reid, Soley and VandenBergh, 1981; Settle and Golden, 1974; VandenBergh, Soley and Reid, 1981). For example, Settle and Golden (1974) looked at the effect of consistent product superiority information claims on advertising credibility. VandenBergh, Soley and Reid (1981) attempted to identify the dimensions of advertising credibility. Credible advertisers were perceived as attractive, likable, trustworthy, prestigious, competent and familiar. Lynn, Wyatt, Gaines, Pearce and VandenBergh (1978) and Reid, Soley and VandenBergh (1981) explored the effects of source characteristics on reaction to public service announcements. Lynn et al (1978) found that ads from the Ad Council were rated higher than ads from a commercial or non-commercial source. Reid, Soley and VandenBergh (1981) found a preference for ads from non-commercial or unspecified sources versus a manufacturer or trade organization. The underlying intent of advertising to sell thus reduces its credibility as an information source.

The numerous criticisms of advertising have prompted an overall negative view of advertising. By comparison, news messages tend to be viewed favorably. Researchers have noted the superiority of news messages over ad messages (Doob, 1945; Galbraith, 1976; McGuire, 1973; Robinson and Kohut, 1988; Salmon, Reid, Pokrywcynski, and Wyatt, 1985; Schudson, 1984). Specifically, news messages are perceived as more knowledgeable and trustworthy (Reeves, Chaffee and Tims, 1985). Given the cynicism induced by advertising, it appears likely that alignment ads will be perceived as less credible and persuasive than comparable publicity.

STUDY ONE

Hypotheses

Study one tests hypotheses that explore differences between alignment ads and brand ads, and between congruent and incongruent issues in an alignment ad.

Based on the belief that consumers assess a company's social responsibility and not just the brands they offer, it is expected that viewers will evaluate alignment ads more favorably than brand ads.

H1: An alignment ad is more effective than a brand ad, as measured in:
b) message credibility
c) message arousal

Further, it is assumed that the issue in the ad will affect consumer's attitude toward the brand. Viewers exposed to an alignment ad will have a more favorable attitude toward the brand than viewers exposed to a brand ad.

H2: *Viewers exposed to an alignment ad have a more favorable brand attitude compared to viewers exposed to a brand ad.*

It is expected that a more favorable view of the brand will increase purchase likelihood. Therefore, viewers exposed to an alignment ad will be more likely to purchase the brand than viewers exposed to a brand ad.

H3: *Viewers exposed to an alignment ad are more likely to purchase the brand featured in the ad than viewers exposed to a brand ad.*

Based on past research exploring congruency levels of information, it is expected that issues congruent with the product will be evaluated more favorably than issues incongruent with the product. Congruent information has been found to be evaluated more favorably that incongruent information.

H4: *An alignment ad containing mention of a congruent issue will be evaluated more favorably than an alignment ad containing mention of an incongruent issue, as measured in:*

a) message credibility
b) message arousal

Pretest

A pretest was conducted to determine which product class and issues to use in the studies. Eighteen undergraduate students enrolled in a Journalism and Mass Communication course were asked to evaluate the congruency levels between issues and product classes.

The congruency of the product class with the issue was measured using 3 - 7 point semantic differential scales, including: *strongly related not related at all; I can see associations I can see no associations; and connected not connected.* All scales met a minimum reliability as assessed by Cronbach's alpha. Reliability scores ranged from a low of .83 (highlighters - illiteracy) to a high of .98 (railroad - endangered species). Pretest means and reliability scores are presented in Table 1. Product involvement was also measured in an effort to exclude highly involving products that might produce brand loyalty.

Denture cream was selected as the product class because it lent itself to both congruent and incongruent issues, and was a low involvement product. The two relatively congruent issues were elderly care and smoking, and the two relatively incongruent issues were homelessness and education.

Method

Design. The purpose of study one was to not only investigate the effects of issue presence in an ad, but also to determine the effects of a congruent versus incongruent issue on ad evaluation. This study employed a between-subjects design with a single factor of three levels: 3 (issue presence: absent vs. congruent vs. incongruent).

Sample. Since students are consumers, student subjects are a valid and accessible population for the study. Participants were recruited on a volunteer basis from large undergraduate journalism and mass communication classes. Extra credit was offered for participation. This study was conducted with approval from the Human Subjects Committee at the University.

A total of 150 students participated. Thirty students in each of the five conditions provided a sufficient number for data analysis.

Stimulus Materials. Ad packets were created for each of the five conditions. Each packet consisted of four fillers and the target ad. One filler ad and one target ad were repeated in the ad packets so that the target ad was not distinguished from fillers by being the only repeated ad. Repeating the ad in a context replete with other ads provided a more realistic, cluttered environment. To control for primacy and recency effects the target ad was not placed in either the first or last position. Filler ads consisted of two other alignment ads, as well as one service ad, and one brand ad. The issues discussed in the filler alignment ads were different than any of the issues used in the target alignment ad.

There were minimal structural differences in the target ads that were created for each of the five conditions to avoid confounds. All ads contained a photograph. Wanta (1988) found that the size of a photograph placed in a message can affect evaluations. Effort was thus made to keep ads constant throughout the conditions (from two-and-a-half to three-and-a-half inches wide, and form three-and-a-half to four-inches long). To control for any gender biases that may arise, the dominant person in each picture was constant- a female.

Research has found a positive relationship between ad size and attention levels. The sheer size of an ad may attract attention and may also affect the amount of attention paid to surrounding material (Sandage, Fryburger and Rotzoll, 1979). The same font and font size were used in the headline and body of the ad. The number of words discussing the issue needed to vary somewhat but was reasonably constant at 61-84. The amount of space allocated to text and the overall size of the ads were very similar.

All five ads contained identical product information. Five versions of the ad were necessary to reflect the three treatment conditions: no issue presence, two congruent issues, and two incongruent issues.

Procedure. The questionnaire was administered in several sessions. For control purposes, sessions were no larger that 15 students. Sessions were conducted on various days and at various times. Students could sign up for a session that was convenient. Since students were allowed to select their own time, sessions were assigned via random distribution of the ad packet at each session.

After arriving to the session, students were welcomed and asked to sign a consent form. Detailed instructions of what the subjects would be asked to do were then read. Each student received a different ad packet which contained several print ads. Students were instructed not to open the ad packet until instructed to do so and not to turn to the next page until instructed to do so. They were informed that some of the ads may appear more than once, but again, not to turn to the next ad until instructed to do so. Warning subjects that ads might be repeated avoided their inference that repetition was a mistake that occurred in assembling their packet. Students were then told that after viewing the ads they would receive a questionnaire packet. They were asked to complete the entire questionnaire packet and to leave nothing blank. Moreover, students were told never to turn back to a page or question once they had moved on. Finally, students were asked not discuss the experiment with others because doing so might affect the overall results and findings of the study. Procedures and instructions were consistent across all sessions.

The experiment required approximately 30 minute to complete. Upon completion of the questionnaire, students were free to leave.

Independent Variables. The independent variable, issue presence, was manipulated at three levels, absent vs. congruent vs. incongruent. Two issues were selected for each congruency level. Pretest results determined the product and issues to be used. The product was denture cream; the two congruent issues were elderly care and smoking; and the two incongruent issues were education and homelessness.

Dependent Variables. Dependent measures consisted of semantic differential scales for the attitudinal and evaluative measures. The direction of half the scale items for each dependent variable was reversed. Scores were recorded to reflect consistent valence and items were summed into scales.

Attitude toward the brand. This was measured using a 4-item, 7-point semantic scale of items commonly used to measure attitude toward brand in consumer research. The scale included the following items: *good bad; like dislike; effective not effective; and pleasant not pleasant.*

Purchase likelihood. This was measured using a 4-item, 7-point semantic differential which included the following items: *would be very likely would be very unlikely; would intend to would not intend to; would be willing to would not be willing to; and would plan on it would not plan on it.*

Evaluation of the ad. The ad was evaluated using 18, 7-point semantic differential items, including: *good / bad; like / dislike; believable / not believable; full of feeling / empty of feeling; effective / not effective; trustworthy / not trustworthy; credible / not credible; not deceptive / deceptive; it moved me / it did not move me; truthful / not truthful; stimulating / not stimulating; arousing / not arousing; warm / cold; not depressing / depressing; not boring / boring; motivating / not motivating; emotional / not emotional; and pleasant / not pleasant*. The factors expected to be extracted were a credibility factor, an arousal factor, and a pleasantness factor. The order in which the items were listed in the scale was random.

Manipulation Check. In order to determine the success of the manipulations, a manipulation check followed the collection of dependent measures. This was verified by asking respondents to assess the relationship between the product class, denture cream, and the issue that present in the target ad that they saw. Respondents who saw no issue in the ad were asked to evaluate the relationship between the product class and the two congruent issues (elderly care and smoking) and the two incongruent issues (education and homelessness).

The congruency of the issue and the product class was measured using a 5-item, 7-point semantic differential which included the following items: *connected / not connected; related / not related; made sense / made no sense; linked / not linked; and logical / illogical.*

Analyses and Results

Most of the analysis was completed using SPSS for Windows software.

Preliminary Analyses

This section begins with a reliability analysis of scales used in the experiment, and a review of the manipulation check and the factor analysis of ad evaluation items.

Reliability Analysis. Reliability scores ranged for a low of Cronbach's alpha = .79 (attitude toward the ad - no issue condition) to a high of .95 (manipulation check - elderly care condition). Thus, all measures met a minimum reliability as assessed by alpha.

Manipulation Check. A one-way ANOVA showed that the differences in ratings were significant F (3, 116) = 40.20 at p < .001. An apriori contrast indicated that the congruency level manipulations were successful and that subjects differentiated between congruent (elderly care: M = 5.53; smoking M = 4.34) and incongruent issues (education: M = 2.57; homelessness: M = 2.48) t = 10.36, p < .001.

Factor Analysis. Table 2 shows the results of a factor analysis (varimax rotation) of the 15-ad evaluation items which revealed three underlying factors with eigenvalues greater than one. The first factor, an "arousal" factor, consists of the following items: *stimulating; moved me; not boring; motivating; emotional; arousing; full of feeling; good; and like.* The second factor, a "credibility" factor, consists of the following items: *trustworthy; not deceptive; believable; credible; and truthful.*

Main Analyses

Evaluation of Message Effectiveness

Message effectiveness is reflected in viewers' attitude toward the brand, viewers' purchase likelihood, and the stimulation and credibility factors extracted from the factor analysis on the ad evaluation items. Since all these factors were highly correlated (see Table 3), it was appropriate to use multivariate analysis of variance (MANOVA) to determine the effect of issue presence and product-issue congruency.

The results of MANOVA are presented in Table 4. A significant main effect of issue presence emerged, with product ads containing mention of an issue (alignment ads) producing more favorable responses than ads containing no mention of an issue (brand ads). Alignment ads were rated as more stimulating and credible, produced more favorable brand attitude, and were found to increase purchase likelihood.

The MANOVA also produced a main effect of congruency with viewers of congruent alignment ads expressing more favorable responses than viewers of incongruent alignment ads. Viewers of congruent alignment ads rated the ad message as more stimulating and credible, formed a more favorable brand attitude and were more likely to purchase the brand.

STUDY TWO

A crucial difference between advertising and news is that of credibility. The credibility of advertising has long been criticized. Ads are often viewed as deceptive and biased, while newspapers have proven to be a more credible and believable medium. The purpose of study two was to compare the new, hybrid form of ad, alignment ads, with more traditional news messages.

Hypotheses

Based on the fact that news messages are rated more credible than ad messages, it is be expected that exposure to news messages containing brand and issue information leads to more favorable attitudes toward the brand than exposure to ad messages.

H5: *Viewers exposed to news messages containing brand information have a more favorable attitude toward the brand than viewers exposed to ad messages containing brand information.*

Further, it would be expected that a favorable brand attitude increases purchase likelihood. Therefore, viewers who see news messages, as opposed to ad messages, containing information about a brand will be more likely to purchase the brand.

H6: *Viewers exposed to news messages containing brand information will be more likely to purchase the brand than viewers exposed to ad messages containing brand information.*

The fact that advertising is often distrusted leads one to expect that news messages will be evaluated more favorably than similar ad messages.

H7: *An news message will be evaluated more favorably than a similar ad message, as measured by:*

a) message credibility
b) message arousal

Based on the fact that news messages are more credible than ad messages, it would be expected that participants would claim to pay more attention to a news message than to an ad message.

H8: *Viewers will claim to pay more attention to a news message than to a similar ad message.*

Method

Design. The experimental design comprises a 2 (media: news vs. ads) x 3 (message content: brand vs. brand and issue 1 vs. brand and issue 2) between subjects design. Two issues were included to pool over in analyses and thereby provide a better basis for generalizability. A congruent and an incongruent issue were included to further improve generalizability.

Sample. Participants were again recruited on a volunteer basis from large undergraduate journalism and mass communication courses. Extra credit was offered for participation. A total of 189 students participated. At least thirty students in each of the six conditions provided a sufficient number for data analysis.

Stimulus Materials. Message packets were created for each of the six conditions, as in study one.

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Procedure. Data collection procedures followed the guidelines described for Study 1, with the exception that sessions were restricted to 18, not 15 subjects. The experiment required approximately 30 minutes to complete.

Independent Variables

The independent variable (news vs. ad messages) was manipulated as follows: Messages were created for all three conditions (elderly care issue, homelessness issue and no issue) in the form of both advertising and news. A total of six messages were created, all of which contained information about Dentu-Creme denture cream. One message combined brand information and elderly care information in the form of news; another combined brand information about elderly care in the form of an ad. The same was done for the homelessness issue conditions and the no issue conditions: one message contained brand information and homelessness information in the form of news; another contained brand information and homelessness information in the form of an ad. With respect to the no issue conditions, one message contained filler information and brand information in the form of news; another contained filler information and brand information in the form of an ad. The filler information was designed not to provide more information specific to the brand, so that it did not act as a confound.

Attempts were made to keep information about the issue and product features similar in both the news and advertising messages. The news stories and ad stories were designed to follow conventions usually associated with content class. News messages featured headlines, body copy, a byline for the reporter, and a photo of the product. Ad messages featured a headline, body copy, a brand logo and a photo of the product.

Dependent Variables

As in Study 1, dependent measures consisted of semantic differential scales for the attitudinal and evaluative measures. Refer to Study 1 for scale descriptions used in the following dependent measures: ***attitude toward the brand; purchase likelihood; evaluation of the message; and performance of the brand.***

Manipulation Check. A three item manipulation check was used for media channel. Respondents were asked to assess the message they saw as to whether it was an advertisements (*looked like an ad   did not look like an ad; read like an ad message   did not read like an ad message; was an ad   was not an ad)* or whether it was a news article *(looked like news message   did not look like a news message; read like a news message   did not read like a news message; was a news message   was not a news message.)*

The direction of half the items was randomly reversed. Advertising and news messages were scored to reflect opposite valence and the mean scores were computed.

Analyses and Results

Preliminary Analyses

This section begins with a reliability analysis of scales used in the experiment, a review of the manipulation checks, and the factor analysis of message evaluation items.

Reliability Analysis. Cronbach alpha coefficients for the measure ranged from .65 to .96. All scales were assessed reliable, therefore.

Manipulation Check. Advertising and news messages were scored to reflect opposite valence and the mean scores were computed. For example, *"looked like an ad"* and *"did not look like a news message"* were scored in the same direction. A one-way ANOVA showed that the difference in ratings were significant at $p < .001$, indicating that the media channel manipulations were successful and that subjects differentiated between ad messages ($M = 5.12$) and news messages ($M = 2.91$).

Factor Analysis. A factor analysis (varimax rotation) revealed two underlying factors with eigenvalues greater than one from the 15-item message evaluation. The first factor, a "stimulation" factor, consists of the following items: *arousing, moving, stimulating, not boring, emotional, motivating, and full of feeling.* The second factor, a "credibility" factor, consists of the following items: *trustworthy, credible, believable, truthful, and not deceptive.*

The two factors are the same as those extracted in study one. Although the items contributing to each of these factors are similar in both studies, they are not identical. In study one, *effective not effective* was the only item which was dropped since it did not contribute to either of the two factors with eigenvalues over one. In study two, the following three items were dropped: *effective not effective, like dislike and good bad.*

Main Analyses

Evaluation of Message Effectiveness. Once again, message effectiveness can be reflected in the factors extracted from the message evaluation factors, brand attitude and purchase likelihood. Since these four measures were once again highly correlated, it was appropriate to use MANOVA to determine the effects of content class and issue presence.

The results of MANOVA are presented in Table 5. A significant main effect of issue presence emerged, with messages containing mention of an issue producing more favorable responses than messages containing no issue. This replicates the findings of study one, which found that alignment ads produced more favorable responses than brand ads. No significant effect of news versus advertising messages was found.

Effect of News and Advertising on Attention Levels. Hypothesis 8 argues viewers will pay more attention to a news message than to a similar ad message, since news messages are more credible than ad messages. Results from a one-way ANOVA reveal a significant difference in the amount of attention that subjects claim to pay to news, as opposed to ad, messages. However, results are the reverse of what was hypothesized. Individuals exposed to ad messages claimed to pay more attention than individuals exposed to news messages (ad messages: $M = 4.51$; news message: $M = 3.70$; $p < .001$).

Discussion

In general , evidence suggests that placing an issue in a message positively affects the overall effectiveness of the message, as indicated by the MANOVA results. This research revealed that alignment ads, ads that contain mention of an issue as well as the brand, are evaluated more favorable than brand ads. Alignment ads were rated as more stimulating and credible, and produced more favorable attitudinal and conative responses. This finding has important implications for advertisers. An issue in the ad appears to lend credibility to the ad. It could be that viewers take the message more seriously when the message is discussing a social issue. Viewers also felt that when the ad discussed an issue, the ad was more stimulating. These positive message evaluations indicate advantages for advertisers concerned about the environment, health, and other social issues.

A closer look at the alignment ads revealed important differences due to the congruency level of the issue with the product. Results from the MANOVA indicated that alignment ads containing mention of a congruent issue are more credible than those containing mention of an incongruent issue. It seems that viewers perceived the connection between the issue and the product and therefore, credibility was enhanced. Congruent issues produced more favorable attitudinal and conative responses.

A hybrid form of public service message and brand ad, alignment ads did not suffer with regard to attitudes elicited compared to equivalent news messages. Since ads offer the advertiser greater control than news, this finding suggests that advertisers can be proactive in promoting issues of concern to society at the same time as promoting their brands.

FUNDING ALTERNATIVES FOR ELECTRONIC ACCESS TO GOVERNMENT INFORMATION

A paper presented to the
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Communication Technology and Policy Division

By
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Abstract -- The allocation and recovery of costs related to electronic public access to government information represent important and controversial public policy issues. Policy makers must carefully balance the goal of widespread public access by electronic means with the need to sustain the infrastructure that makes such access possible. The paper argues that policies with the stated objective of promoting low- or no- cost electronic access, but which do not allow for adequate cost recovery, will retard the development of robust electronic public access systems. Based on a case study in Washington State, the paper discusses the need to distinguish between the content and delivery of government-held information, to allow agencies to charge user fees as a cost-recovery alternative, and to employ safeguards which ensure that such fees do not inhibit the goals of public access.

INTRODUCTION

The allocation of costs associated with building and maintaining public electronic delivery systems for government information is an overriding concern of both government agencies and consumers. Government decision-makers are rightly concerned that the costs associated with building and maintaining public electronic delivery systems do not overly burden already-scarce government resources, and share with consumers the concern that any such systems do not impose greater costs to the end user, potentially widening the gap between the so-called "information haves" and "have nots" based on an ability to pay [1].

This article revisits the funding issues addressed by the Washington State Legislature and a citizen committee that it created to make recommendations on the development of electronic public access systems. The recommendations of that committee, the Public Information Access Policy Task Force [2], are contained its final report, Report and Recommendations: Encouraging Widespread Electronic Access to Public Records and Information Held by State and Local Governments (hereafter Final Report) [3].

The authors agree in principle with the Task Force that the goal of providing public, low-cost electronic access to government information. However, they argue that requiring agencies to provide electronic delivery of information at below incremental cost potentially retards the development of the very public access systems that such a policy seeks to encourage. Such a policy provides no ready funding source for the development, enhancement and eventual rebuilding of the networked infrastructure that makes public access possible. Indeed, this recommendation, if implemented, would effectively ensure that public electronic services will not be developed in Washington State on any large-scale or significant basis. Based on the Washington case study, the article argues, too, that even where such services are deployed, policies which mandate that electronic government information be provided at low or no cost to commercial interests would, in effect, provide a substantial and largely invisible taxpayer subsidy of those commercial enterprises -- even where most taxpayers will not use the electronic services and thus receive no off-setting public benefit.

The article concludes that state information policies must balance the goals of broad electronic public access to government information with the government's need for sustainable funding for such services, recognizing that electronic delivery systems will not develop fully without adequate provisions for cost recovery. Of course, where the Legislature makes a specific finding that a particular electronic information dissemination activity serves a broad public constituency and a compelling public interest, it can surely choose to fund services through legislative appropriations and not through user fees. However, where such funds have not been allocated, it is wholly appropriate for agencies to consider user fees as a cost recovery option. For this reason, the authors argue that policy makers should reject recommendations that would restrict user fees to levels insufficient to recover the costs for public electronic information services.

This article addresses three factors which must be balanced in developing a policy framework for successful and sustainable electronic public access to government-held records. First, the content of government information must be delineated from its delivery. Second, user fees provide a funding alternative that, as part of a larger policy framework, are consistent with widespread public access at the lowest possible cost. Third, a balanced view of the relationship between open access and cost recovery ensures that fees do not inhibit public access.

While the examples used illustrate the Washington State experience, this discussion is generally applicable to other jurisdictions.

THE WASHINGTON CASE STUDY

In recent years, Washington State policy makers have been grappling with these funding issues. In 1994, the state legislature created the above-named Policy Task Force, comprised of members of the legislature and gubernatorial-appointed representatives of state agencies, local governments, the press, and the public, to address public electronic access issues and recommend strategies for widespread electronic access to government information. In December 1994, this Task Force issued an interim report, recommending, inter alia, that fees for such access be limited to "actual costs," defined as not exceeding "the incremental cost of providing the data, which does not include the cost of creating the information system for purposes relating to the agency mission." It added, "[a]gencies may elect to provide access at reduced or no charge" [4]. Legislation based on the interim report was introduced but failed to pass during the 1995 legislative session. [5]

With the release of its Final Report in December 1995, the Task Force significantly altered its position on funding. It dropped references to "incremental costs," and stated instead:

> The Task Force believes that fees charged to provide information or records should be limited to direct costs of satisfying a request, *not including system or agency overhead, or system maintenance or upgrade* [emphasis added]. Charges for masking copying elements in existing databases should not be passed on to the public requesting information. It may be reasonable to charge for staff time and other direct costs in responding to standard or custom requests, so long as such charges do not pose significant barriers to public access, but this is an area that will require legislative clarification. [6]

Elsewhere in the Final Report, the Task Force stated that "[f]ees charged to provide information or records requests should be limited to the direct costs of satisfying a request, not including system or agency overhead, or system maintenance or upgrade. ... Charges for withholding/masking nondisclosable data should not be passed on to the requester" [7].

By its revised recommendations, the Task Force would appear to force agencies to price public information services at below incremental costs, thus requiring at least part of document costs be paid by other sources. Indeed, the Task Force stated:

> Funding to meet the cost of providing for access -- including, the building of information systems, the digitizing of information, information management, and maintenance and upgrade of information systems -- should come from state and local appropriations, federal dollars, grants, private funds, cooperative ventures among governments, and public/private partnerships [8].

The Final Report provided only a brief discussion as to why user fees beyond these "direct costs" are inappropriate. It asserted that "[r]eselling government information can erect a significant barrier to direct and ready citizen access" [9], and adopted as a "guiding principle" that state policy should "encourage broad access to government information in electronic form regardless of a user's geographic location, economic condition, or physical abilities" [10]. The Task Force's concern, then, was that user fees beyond direct costs would potentially inhibit "direct and ready" access to many citizens.

In 1996, the Legislature enacted SB 6556 [11], which codified many of the Task Force's recommendations, including development of a Government Information Locator Service pilot project and public notice and comment requirements for agency information technology plans. With regards to funding, the resulting legislation echoed the principles contained in the Task Force Final Report that would limit user fees:

> {+ NEW SECTION. +} Sec. 12. COSTS AND FEES. Funding to meet the costs of providing access, including the building of the necessary information systems, the digitizing of information, developing the ability to mask nondisclosable information, and maintenance and upgrade of information access systems *should* [emphasis added] come primarily from state and local appropriations, federal dollars, grants, private funds, cooperative ventures among governments, nonexclusive licensing, and public/private partnerships. Agencies should not offer customized electronic access services as the primary way of responding to requests or as a primary source of revenue. Fees for staff time to respond to requests, and other direct costs may be included in costs of providing customized access.
>
> Agencies and local governments are encouraged to pool resources and to form cooperative ventures to provide electronic access to government records and information. State agencies are encouraged to seek federal and private grants for projects that provide increased efficiency and improve government delivery of information and services.

By use of the term "should" instead of "shall," the legislation does not strictly prohibit user fees, but merely establishes broad goals or principles establishing a preferred course [12].

Even so, neither the legislation nor the Task Force recommendations delineate between the form and content of government records. As discussed below, cost recovery should not apply to the records themselves (which are a public trust) but to the means of distribution.

DISTINGUISHING BETWEEN DELIVERY AND CONTENT OF GOVERNMENT INFORMATION

At the outset, the creation of documents should be distinguished from their delivery. The government is the public trustee of all records it creates or maintains. Under the Washington

State Public Disclosure Act, an initiative approved by voters in 1972, a person has the right to examine all state public records except those that fall into categories specifically exempt from disclosure [13]. The creation of such documents is publicly financed insofar as citizens have paid for the public office, personnel, pencils, paper, and computers to produce them. Having paid for them once, it is appropriate that the public be entitled, as it is under the Public Disclosure Act, to inspect the records at no cost [14].

By contrast, reproduction and delivery of government data and information present their own cost considerations. With regard to reproduction, Washington law specifically authorizes agencies to impose "a reasonable charge for providing copies of public records and the use by any person of agency equipment to copy public records, which charges shall not exceed the amount necessary to reimburse the agency for actual costs of the copying" [15]. With regard to delivery, current state law requires agencies to "honor requests received by mail," [16] but does not require them to absorb the costs of photocopying or delivering the information to the requester. Although most agencies absorb postage costs for all but the most voluminous requests, they generally do not pay the delivery costs where a requester elects, for example, to use courier service, overnight mail, or fax to ensure faster delivery. Electronic access is, like a courier service, a speedier and more convenient form of delivery.

The Task Force's removal of the term "incremental costs" from its Final Report -- and its substitution of the terms "direct costs" and "actual costs" -- ignores this distinction and would, if implemented, force agencies to fund services not currently mandated by the Public Disclosure Act. Moreover, the term "direct costs," as used by the Task Force, would preclude agencies from recovering "system or agency overhead, or system management or upgrade." The term "actual costs" would preclude recovery of the considerable costs of redacting non-disclosable data.

While the Task Force suggests that its use of the term "actual costs" is not inconsistent with the same term found in the state Public Disclosure Act, that position is without basis. The Task Force states, without further elaboration, "[a]ny charges for responding to public records requests should be limited to actual costs of satisfying the request. A definition of 'actual cost' is not identified in the Public Disclosure Act. Charges for withholding/masking nondisclosable data should not be passed on to the requester" [17]. However, the Task Force fails to identify any existing legislative or executive directives that bar agencies from recovering incremental costs for delivery of public records. To the contrary, it appears from the context of the Public Disclosure Act that "actual costs" as used therein *does* refer to incremental costs of processing requests for public records. A 1991 Washington Attorney General's opinion stated that actual costs as used in the Act "could include such items as the costs of the copying machine *(including maintenance)*; paper and other supplies; *and staff time devoted to the copying process* [Emphasis added]. The agency must be able to justify its charges based on these and other direct costs." [18] The same opinion found that records search fees were not allowable, since they were not "incidental to copying," but pertained to inspection of public records. "[I]t would be incongruous to impose search fees as 'incidental' to copying, when inspection of those same records must be free." [19] This opinion, then, makes a clear distinction between inspection of public records, which is free, and obtaining copies, which is not.

Moreover, while the Public Disclosure Act makes clear that electronic records are public records [20], it does not mandate that government provide for inspection in the most convenient manner regardless of costs. Washington law requires only that "[r]esponses to requests for public records shall be made promptly by agencies" [21]. The Attorney General has stated that in determining whether an agency has responded "promptly" to a document request -- including the steps of "deleting or redacting the portions of each record that the agency determines should be withheld from disclosure" -- "courts will take into account the agency's resources, the nature of the request and the content of the records requested" [22]. Where an agency's resources do not allow for electronic public delivery systems, or where they do not provide for firewalls on systems initially designed for internal agency use, the less-costly process of manually redacting records is legally sufficient, even though it may be far less prompt and less convenient to the requester. From this perspective, electronic redaction is related to the convenience of delivery, not to the search and inspection of public records.

A recent federal court case supports this perspective. In *Los Angeles Times v. County of Los Angeles* [23], the County of Los Angeles faced a constitutional challenge from several media companies seeking free access to data compiled from its automated court case management system, the Information Access Provider (IAP). The County made daily updates available to private parties, including "credit rating firms, rental agencies, title companies, or information providers," for a fee pursuant to a subscription agreement with the County. [24] The media companies argued that the data compiled was a "court record," and that the Supreme Court has recognized an affirmative First Amendment right of unimpeded media access to court proceedings and records. [25]

In a decision by Judge Richard A. Paez, the federal District Court in Los Angeles said the media companies had not been deprived of their federal constitutional rights. He distinguished the paper court files used by judicial officers and court staff from the electronic compilations made available to the public for a fee, saying "there is no historical tradition of allowing public access to records ... *in the format and manner sought by the plaintiffs*." [26] Because the public has access to court records in paper format, on terminals located in the clerk's office, or on magnetic tape, he said, the County has satisfied the First Amendment goals of promoting public confidence in the judiciary, ensuring accurate fact-finding, and providing the public information about how the law is practically applied by judges. "Even with daily access to the IAP Program data," he wrote, "all of these methods and court records remain available to plaintiffs and members of the public. Thus, daily on-line access to the IAP Program data does little to enhance public confidence in the courts." [27] In other words, the First Amendment does not mandate that the public has the benefit of the most convenient delivery mechanism for government information regardless of costs.

Once again, a policy that bars an agency from recouping funding for the necessary security components of an information system undermines the agencies' ability to develop these more convenient information systems in the first place. Of course, where an agency uses an information service for both internal use and public electronic access, it should separate the costs of each. For example, if an agency has a photocopier for internal use, but uses this machine to copy a document in responding to an open records request, the incremental costs would only reflect the actual cost of the paper, ink and toner used for the photocopy. In addition, that percentage of the cost and maintenance of the photocopier directly apportionable to satisfying the documents request, and not attributable to the agency as overhead for its internal operations, should also be recovered. However, if a government's internal operations do not require a public access component, the additional costs of developing the system to accommodate public access must also be included within incremental costs. James Love of the Washington, D.C.-based Taxpayer Assets Project notes that where governments' internal needs would be met without public access services, incremental costs of providing public access would be explained in the equation $IC_P = C\ (P,G) - C\ (G)$, where C (P,G) is the cost of both the internal use (G) and public

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access (P), and C(G) is the cost of internal use only [28]. Under this equation, the costs of public interfaces, firewalls, and other components that must be added to provide public electronic access are all incremental costs. The substituted term "actual costs" contained in the Task Force Final Report is far more limited than the same term as used in the Public Disclosure Act, and should not be read as interchangeable.

The Task Force recommendations not only commingle the concepts of public access to government records with their electronic delivery, but also significantly depart from current agency practices. According to a 1994 survey of state agencies by the Washington State Office of Financial Management (OFM), nearly two-thirds of state agencies currently provide or plan to provide information services or Washington government-developed software to the public. Many agencies, including the Utilities and Transportation Commission, the Department of Information Services (DIS), the Department of Health, the Office of the Secretary of State, and the Department of Natural Resources, now provide information services through fees designed to recover costs [29].

Information dissemination can take many forms -- from first-class mail delivery of paper or electronic documents (e.g., on disk or cartridge) to electronic delivery over the most costly computer networking systems. While there are potential public benefits that may stem from electronic delivery of government records, it does not follow that *all* electronic delivery systems need be made available to *all* citizens in *all* cases to further either the general public interest or a specific government objective. Where particular delivery systems would primarily serve a narrow constituency, and not the public as a whole, a fee recovery mechanism may be appropriate. Even where a system may have a broader public demand, user fees may be appropriate so long as they do not pose improper barriers to public access.

USER FEES AS A FUNDING ALTERNATIVE

There is no such thing as "free" electronic access. The design, development, deployment, and refurbishment of public electronic delivery systems require significant investments that must come from some source, whether it is a private grant, legislative appropriation, existing agency budget, or user fee [30]. Determining the appropriate kinds of electronic delivery to provide requires an assessment of the specific government objective, the extent and nature of consumer demand, and the best and most cost-efficient technology for the task.

Public Demand for Government Information

In Washington as in other states, the discussion of public electronic access has often assumed that individual citizens will be the primary users of electronic delivery of government information. As a practical matter, however, the vast majority of direct requests for government information from Washington residents deals with a small number of specific categories of information. For example, from some 120,000 calls logged by the Washington State Telephone Operator in 1994, the following topics were the most common: (1) location of the nearest welfare or consumer service office, (2) state park reservations, (3) automobile licensing, (4) driver licensing, (5) air pollution, (6) tourism, (7) legislative information, (8) residency requirements, (9) vital records, and (10) child protective services [31]. Beyond these specific categories, where widespread public demand is readily acknowledged, there is often little widespread public demand for particular kinds of information. Additional demands that exist comes from narrow and specific constituencies, usually commercial entities seeking information for resale or attorneys seeking information for litigation purposes. The state Office of Financial Management noted in 1994 that 59 percent of state agencies surveyed reported receiving requests for data for commercial purposes, while 47 percent had received requests for litigation purposes [32].

Cost recovery, then, should focus on these regular commercial users. For example, large commercial users (who are often resellers of government information) directly invest substantial funds to acquire, format, analyze, and distribute government information over broad geographic areas to a diverse customer base. In addition, specialty commercial resellers of public records invest in highly targeted categories of records to format, analyze, and provide information to a highly select customer base. These users require specialized analysis that is generally of a commercial nature and has a high financial value. They add value through their understanding of the specific business needs of the select customer base to which they provide service. In each case, the costs of electronic delivery of raw government data has a high commercial value to a specific audience, but very little to the larger public.

While the Task Force Final Report correctly encourages the legislature to explore a variety of funding sources [33], it would unnecessarily preclude government agencies from developing sustainable fee-based services where a broad public interest that would justify public funding has not been established. In these cases, direct fees to users are the fairer form of recovering costs, since only those who use a service are burdened with paying for it. By contrast, direct public funding of electronic delivery systems may be inappropriate, since in many cases it would be a taxpayer subsidy to commercial entities who use government information for profit.

Availability of Legislative Funding

In its Final Report, the Task Force recommended that the legislature "provide incentives for agencies to pursue development of electronic access systems by approving agency budget requests for innovative and cost effective electronic access proposals" [34]. At the same time, the Task Force stated that legislative appropriations "should not come at the expense of other high-priority agency services" [35]. Even assuming broad public interest in universal electronic availability of government information, the Task Force's preference for legislative appropriations to the exclusion of user fees is at odds with the current economic realities facing state governments, and will not promote the development of public, state government information systems.

First, to provide appropriations for electronic access without reducing funds for other government programs assumes an increase in total government funding. Where there is no growth in state funding, appropriations for electronic delivery of government information must be made at the expense of existing programs. Indeed, Washington State is currently subject to the limits of Initiative 601 [36], passed by voters in 1993, which limits the amount of money the Washington Legislature can spend without turning to the voters for approval. In its first 18 months, the Initiative banned any tax increase without a public vote. After that, it established a spending cap for state government -- based on a formula that factors in population growth and inflation -- and requires a super-majority of the legislature (60 percent) and voter approval to exceed the cap [37]. In this environment, agencies that seek legislative appropriations to provide such new services, in effect, ask the government to take attention and resources away from existing projects, programs, and services. Even were Washington not subject to Initiative 601, it must be recognized that electronic access is not a service that government has traditionally provided. Therefore, it is unlikely that the Legislature would significantly decrease funding for existing programs to allow for the now-higher priority electronic access projects. In this environment, electronic access services will simply not be developed or implemented.

Second, where development and deployment of services is wholly dependent upon legislative appropriations, there is no certainty that funding, even if approved one year, would be sustained in the next. Several examples are illustrative. In Hawaii, the Legislature in 1995 terminated the Hawaii Interactive Network Corporation, or "Hawaii INC," a publicly owned gateway and videotex service, citing high costs [38]. In California, the Legislature abandoned the Info/California electronic kiosk project, citing high costs and dissatisfaction with content [39]. In Washington State, the Department of Licensing's Licensing Applications Migration Project (LAMP), which was intended to modernize the mainframe processing and integrate databases for driver, vehicle and vessel systems, was originally estimated to cost $67.5 million, to be funded through legislative appropriations. However, when the project received lower-than-requested appropriations in 1994, the cost estimate was revised to $74.1 million due, in part, to the additional systems and operational costs and personnel expenses resulting from the 18-month schedule extension [40].

By contrast, where agencies are granted seed money to develop cost-recoverable services, the success or failure of such services will more likely be determined by their ability to identify and respond to actual demands. For example, New Mexico Technet, a statewide information network linking research institutions, schools, universities, government agencies, and private companies, began with a $2 million state appropriation and $1 million in federal grants. Relying on user fees as its primary funding sources, it became self-sufficient after two years [41]. Several examples are found in Washington State. During winter months, the Department of Transportation provides toll-call mountain and highway pass information at 35 cents per minute. The Department of Licensing provides business information on toll-call basis -- $4.95 per call, plus 50 cents per minute -- generating $8,000 a month. Given most agencies' budget restraints, it is doubtful such services would be provided except on a cost-recoverable basis. To prohibit such services on the grounds that they are funded by user fees would deny convenient delivery of government information to citizens who find such information vital. On the other hand, to force all taxpayers to share the costs of such services would unduly burden those who would place no value whatsoever on the information.

BALANCING THE GOALS OF ELECTRONIC PUBLIC ACCESS WITH THE NEED FOR ADEQUATE SYSTEM FUNDING

The objectives of public electronic access, as set forth by the Legislature [42], are not incompatible with direct assessment of fees on users. The goals of government efficiency, strategic management of government resources, and citizen access may best be assured by a policy that recognizes the need for agency flexibility in developing sustainable funding mechanisms. At the same time, the state can assure that such mechanisms do not create undue barriers to the public's ability to use electronic delivery service, either by charging fees that make the services unaffordable to most users or by requiring that they have expensive equipment to access them. Rather than limit user fees outright, state policy should set forth criteria to provide guidance to agencies considering user fees to ensure that the public's interest in such services is protected.

Specifically, agency determinations of fees for electronic access services should address three basic points. First, the establishment of fee-based electronic services must be viewed as an addition to, and not a substitute for, free non-electronic access to government records now provided under the Public Disclosure Act. Second, where fees are assessed, fee structures should be determined with a limited goal of achieving sustainable funding for the service itself (including regular upgrading and refurbishment), and not of providing an additional revenue source for unrelated agency activities. Such a cap seeks to ensure that fee structures do not unduly preclude access to significant numbers of users, especially non-profit organizations and individuals. Third, any electronic access delivery mechanism should provide some level of free electronic access through terminals or kiosks located in public facilities such as schools or libraries. A policy encompassing these points would allow governments to develop potentially sustainable sources of funding for services, which allow them to recover agencies' costs and, at the same time, further public goals of electronic access by subsidizing and improving low-cost or no-cost access services.

There are several ways to structure user fees to mitigate further the concern that electronic delivery of government information will be unavailable to citizens who need it. For example, agencies might establish graduated fee schedules based on the volume of use, so as to allow less expensive access to occasional or low-volume users. They might also vary fees according to the time of day a service is accessed, such as setting lower fees after nine-to-five working hours or on weekends.

The most common way is to establish differential pricing which imposes higher fees on high-volume commercial customers. The American Civil Liberties Union (ACLU) of Washington State recommended to the Task Force that fees for commercial users cross-subsidize public access by individuals, non-profit organizations, and schools. "Fees charged to large volume commercial users may be greater than the cost of providing access to those users, as long as the surplus is used to subsidize access to those exempted from fees" [43]. Jane Nelson, a lawyer with the Office of the Administrator for the Courts in Washington and a former Task Force advisory member, has also noted that "wide-scale and inexpensive public access ... may require outlays of funds for equipment which could be financed by charging commercial enterprises higher prices for 'wholesale' access" [44]. Indeed, such user fees for commercial entities could go far to implement the Task Force's call for the public to have "at least one avenue of no cost access to the highest caliber version of any publicly funded government information system that serves an outside constituency, perhaps through access to the state's officially designated depository libraries" [45].

Reasonable and standardized user fees dedicated to improving public electronic information services would not impose undue economic burdens on commercial concerns. These companies generally pass the fees on to their commercial customers. Moreover, companies would still have the option of obtaining documents or electronic records through mail or in person, or, depending on the fee structure, through after-five or weekend access when user fees might be lower. In any event, where user fees are limited to the development, maintenance, and refurbishment costs of public electronic services, it can also be expected that, in many cases, fees would decline over time as the government recovers its development costs.

Distinctions between commercial and non-commercial users are common for government information services in Washington State and elsewhere. The Washington Public Disclosure Act differentiates between commercial and non-commercial users, prohibiting the sale of lists of individuals for commercial purposes [46]. The federal Freedom of Information Act (FOIA) establishes a fee schedule for access to government records that distinguishes the media, educators, and researchers (who pay the actual cost of duplication only) from commercial requesters (who pay additional search and review fees) [47]. The Federal Election Campaign Act of 1971 requires candidates to file reports of campaign contributors and contributions, but states that information disclosed in such reports "may not be sold or used by any person for the purpose of soliciting contributions or for commercial purposes...." [48].

At least one commentator has suggested that fee distinctions between commercial and non-commercial users raise potential First and Fourteenth Amendment constitutional concerns inasmuch as they may preclude access to the press but not to the public in general [49]. However, the same federal court decision on which this commentator relies, *Legi-Tech, Inc. v. Keiper* [50], specifically noted that fee differentials -- as opposed to an outright ban on access to government information to commercial users -- would not raise First Amendment concerns where the fees are narrowly tailored "to conform to the ostensible purpose of preventing free riding" by a commercial entity whose own resale of government information would undermine the agency's ability to recover costs [51]. That case dealt with the New York State government's refusal to allow a privately-run information reseller, Legi-Tech, Inc., to subscribe to its service, the Legislative Retrieval Service (LRS). The Court said:

> We are assured by Legi-Tech that it makes no claim that LRS must allow those able and intending to retransmit LRS material to subscribe at the same price as those who have no such plans or ability. To the extent that concession means that Legi-Tech is willing to pay the true cost to LRS of its subscription, *namely the revenue LRS will lose as a consequence of Legi-Tech's retransmission of LRS materials,* we believe that LRS may not decline to offer subscription rights to Legi-Tech [52].

In other words, the Court declined, on the basis of the factual record before it, to rule that Legi-Tech had a right to government information on the same terms as other members of the public, only that it had a "limited right of access" to LRS material that prohibits the government from refusing outright to make electronic public information services available to resellers [53]. No other court has yet addressed the constitutionality of differential fees on a federal constitutional basis [54]. While four states have state constitutional guarantees of public access, which may themselves bear on differential fees [55], Washington is not among them.

Still, care must be taken in establishing differential fee schedules based on commercial and non-commercial uses since such distinctions raise potential issues of confidentiality and enforcement. In some cases, differential fee schedules may require records custodians to ask requesters their identities and the nature of their requests, inviting abuse by records custodians and possibly having a "chilling effect" on members of the public who seek information over the systems. They may also put agency records custodians in the position of making difficult legal and technical decisions about whether a request which involves both commercial and non-commercial elements was predominately in furtherance of a commercial or a public interest [56]. For this reason, agencies must establish procedures which interpret non-commercial uses broadly, thereby mitigating the potential for such abuse or uncertainty.

CONCLUSION

The objective of widespread public electronic access to government information does not by itself justify an outright ban on user fees or a fee limit that precludes cost recovery of public electronic information systems. To the contrary, user fees can, in many instances, promote widespread access by subsidizing agencies' public missions. In most cases, agencies' budgets do not allow for the construction or maintenance of public access systems, and continuing large-scale biennial appropriations cannot be guaranteed -- and indeed, are unlikely in the present political environment. Where user fees are not available to agencies as funding alternatives, it is unlikely that public electronic services will ever be provided on a large-scale or meaningful basis, or that the data and infrastructure provided will be kept current and useful. Moreover, where legislative appropriations are the primary means of funding electronic systems, which are used primarily by commercial entities, the government is, in effect, subsidizing those private concerns at taxpayer expense. In many cases, user fees are a fair and appropriate funding alternative that should not be foreclosed to government agencies seeking to provide public electronic access. In balancing the goals of electronic public access with the need for funding electronic access systems, policy makers should reject recommendations that would deny state agencies the ability to recover costs for such services.

NOTES

1 See, e.g., "A New Divide Between Have and Have-Nots?" Time Magazine On-Line at the URL: http://www.pathfinder.com/@@zRNJdwAAAAAAADgA/time/magazine/domestic/1995/special/special.society.html; "Principles on Public Information/Request for Comments," 60 Fed. Reg. 30609 (National Commission on Libraries and Information Science 1995).

2 1994 Wash. Laws Ch. 40, codified at Wash. Rev. Code § 42.17.261 (1994).

3 Public Information Access Policy Task Force, Final Report, Dec. 1, 1995. This report is posted electronically at the URL: http://www.wa.gov/dis/TechCentral/taskforc.html.

4 Public Information Access Policy Task Force, *Initial Recommendations*, Dec. 1, 1994, at. 5.

5 Subst. Senate Bill 5248 (1995).

6 Final Report, at 28 (emphasis added). While the term "masking copying elements" is unclear, the authors interpret it to refer to the redaction of information exempted from the state Washington Public Disclosure Law, Wash. Rev. Code Ch. 47.17

7 Id. at 9.

8 Id.

9 Id. at 27.

10 Id. at 3.

11 Engrossed Second Subst. Senate Bill 6556, An Act Relating to public electronic access to government information, 1996 c 171 § 2. This Act is codified at Wash. Rev. Code §§ 43.105.250-310.

12 In State v. Krall, 125 Wn.2d 146, 148 (1994), the state Supreme Court discussed the difference between "shall" and "may" in a statute. The Court said, "It is well settled that the word "shall" in a statute is presumptively imperative and operates to create a duty." Id., *quoting* Erection Co. v. Dept. of Labor and Indus., 121 Wn.2d 513, 518 (1993). By contrast, the Court said, the use of other words in the same statute indicates "that the two words have separate meanings," one being mandatory and one being directory. See also, State v. Bryan, 93 Wn. 2d 177, 606 P.2d 1228 (1980).

13 As amended in 1992, the Act states:

> The people of this state do not yield their sovereignty to the agencies that serve them. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may maintain control over the instruments that they have created. The public records subdivision of this chapter shall be liberally construed and its exemptions narrowly construed to promote this public policy.

Wash. Rev. Code § 42.17.251 (1994). The Act exempts from disclosure 33 categories of government documents, including personal information in files of public school students, hospital patients, welfare recipients, public agency employees and appointed or elected officials. See, e.g., Wash. Rev. Code § 42.17.310 (1994).

14 Wash. Rev. Code § 42.17.300 (1994).

15 Id.

16 Wash. Rev. Code § 42.17.270 (1994).

17 Final Report, at 8.

18 Public Records -- Initiative No. 276, 1991 Op. Att'y Gen. 6, at 6 (emphasis added).

19 Id. at 5-6.

20 Wash. Rev. Code § 42.17.020(27) defines "Public record" as including "any writing containing information relating to the conduct of government or the performance of any governmental or proprietary function prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics." Wash. Rev. Code § 42.17.020(29), in turn, defines "writing" to mean "every ... means of recording any form of communication or representation, including, but not limited to, words, pictures, sounds or symbols, or combinations thereof, and all papers, maps, magnetic or paper tapes, photographic films and prints, motion picture, film, and video recordings, magnetic or punched cards, discs, drums, diskettes, sound recordings, and other documents including existing data compilations from which information may be obtained or translated."

21 Wash. Rev. Code § 42.17.320 (1994).

22 1991 Op. Att'y Gen. 6, at 4.

23 Los Angeles Times v. County of Los Angeles, Case No. CV-95-6972-RAP(C.D. Cal., November 14, 1996).

24 Id. at 2, 12.

25 Id. at 21-26.

26 Id. at 27 [emphasis added].

27 Id. at 28.

28 James Love, "Pricing Government Information," *Jrl. of Govt. Information* 22, no. 5 (1995): 363-387. The American Civil Liberties Union of Washington calls for a careful accounting of incremental costs, but would allow the imposition of user fees to cover them. "[I]f fees must be charged, the total revenue must be no greater than sufficient to cover the incremental costs of providing electronic or other new forms of access." ACLU of Washington, *Policy on On-Line Access to Government Information*, July 17, 1993 (hereafter "ACLU Policy") at 2.

29 See "Survey Notes On Public Records Issues (Memo from Fred Hellberg, Senior Policy Analyst, Office of Financial Management, to Nancy Zussy, State Librarian, and Sam Hunt, Legislative Liaison, DIS)," Aug. 19, 1995 (hereafter "Hellberg Memo").

30 For example, the costs of making portions of an internal legislative database available to the public exceeded $75,000, and requires another $58,000 annually to cover operating costs. Washington State Legislative Service Center, *A Briefing on the Legislature's Public Access Systems*, January 1995.

31 Undated memo [c. August 1995] from State Operator's Office, Washington Department of Information Services.

32 Hellberg Memo, *supra* at n. 18.

33 See text at n. 8.

34 Final Report, at 24.

35 Final Report, at 24.

36 1994 c 2 § 2 (Initiative Measure No. 601, approved November 2, 1993), codified at Wash. Rev. Code Ch. 43.135. See B. Ellis, "Washington Splits in Tax Initiatives," The (Portland) Oregonian, Nov. 3, 1993: A1.

37 Wash. Rev. Code § 43.135.035.

38 V. Viotti, "Budget cuts force Hawaii INC to close," Honolulu Advertiser, July 26, 1995: 1.

39 D. Bernstein, "Agencies That Escape Cuts Despite Loud, Long Criticism," Sacramento Bee, April 24, 1995: A11.

40 Department of Information Services Policy and Regulatory Division, Report on the Project Oversight and Risk Assessment Report for Licensing Application Migration Project, May 26, 1995.

41 T. Boulanger, "Ten Years of Technet," New Mexico Business Journal, Vol. 19, No. 10 (1995): 39.

42 The Legislature found

> that government information is a strategic resource and needs to be managed as such and that broad public access to non-restricted public information and records must be guaranteed. The legislature further finds that reengineering government processes along with capitalizing in advancements made in digital technology can build greater efficiencies in government service delivery. The legislature further finds that providing citizen electronic access to presently available public documents will allow increased citizen involvement in state policies and empower citizens to participate in state policy decision making.

Wash. Rev. Code § 42.17.261 (1994).

43 ACLU Policy, at 2.

44 Jane W. Nelson, "The Public's Records: Public Records Policy in the Information Age," presented to the American Association of Law Librarians, Pittsburgh, July 31, 1995, at 7.

45 Final Report, at 8.

46 Wash. Rev. Code 42.17.260(7)(1994).

47 House Committee on Government Operations, *A Citizens Guide On Using the Freedom of Information Act and the Privacy Act of 1974 to Request Government Records*, H.R. Rep. No. 103-104, 103d Cong., 1st Sess. 9 (1993).

48 2 U.S.C. § 438(a)(4).

49 Florida Legislature Joint Committee on Information Technology Resources, *Electronic Records Access: Problems and Issues*, January 1994, at 87-90.

50 766 F.2d 728 (2d Cir. 1985).

51 Id. at 735.

52 Id. at 736 (emphasis added).

53 Id.

54 In Federal Election Comm'n v. Political Contributions Data, Inc., 943 F.2d 190 (2d Cir. 1991), the court explicitly declined to address the constitutionality of the Federal Election Campaign Act's restrictions on use of Federal Election Commission campaign reports for commercial purposes. Instead, the court found that the defendant's use of the reports was not commercial under the Court's interpretation of the statute, thereby avoiding the constitutional question.

55 See Fla. Const. art. 1, § 24; La. Const. art. 12, § 3; N.H. Const. Pt. 1, art. 8; N. Dak. Const. art. XI, § 6.

56 Such issues have frustrated legal scholars, courts, and federal agencies for years. See, e.g., R.J. Reynolds Tobacco Co., 1 Trade Reg. Rep. (CCH), para. 22,522 (FTC, April 11, 1988)(FTC divided whether issue advertising was primarily commercial or political speech); FEC v. Political Contributions Data, Inc., 943 F.2d 190 (2d Cir. 1991)(appeals court reversing lower court affirmance of agency definition of "commercial purposes" under Federal Election Campaign Act). See generally, D.F. McGowan, "A Critical Analysis of Commercial Speech," 78 Cal. L. Rev. 359, 382-390 (1990).

An Investigation of Colorism of Black Women in News

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An Investigation of Colorism of Black Women in News

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INTRODUCTION

While research on women's portrayals in the media has flourished since its inception in the 1960s, it appears no studies have been conducted that examine solely the portrayal of black women in news, though black women have been the focus of several advertising studies. Unlike traditional advertising studies which examine women's portrayals, those that do focus on black women differ in that they tend to explore issues surrounding physical appearance---skin tones, facial features and hair textures---instead of the roles in which black women are shown. This concentration on looks is referred to variously as "colorism," or "the color complex."[1] (The term colorism will be used for the duration of this paper.)

Historically, colorism has involved light-skinned Blacks' rejection of Blacks who were darker. And, in many instances, it has involved dark-skinned African Americans spurning their lighter-skinned counterparts for not being black enough. Colorism also includes attitudes and beliefs suggesting that Blacks are more attractive and more intelligent when their hair textures and facial features resemble more closely that of whites rather than the typical Afrocentric look (dark skin, broad nose, full lips, kinky hair).[2] The psychological fixation surrounding colorism has led many Blacks to discriminate against one another for decades, and because it has long been considered unmentionable, it has been called the "last taboo" among African Americans.[3]

Research has even proven that colorism can influence several aspects of human life: mate selection, life chances, perceived self-worth, and attractiveness, among others. Research also has shown that African-American women, rather than men, are most often affected by the complex. Dark skin, typically Afrocentric black women have suffered most of the negative reactions while light skin, Eurocentric black women have benefited most.[4]

For the above reasons, and others, the researcher is interested in colorism in black women in editorial photos. Specifically, this paper investigates to what extent news editorial photographs reveal the Eurocentric black woman's life advantages over that of the Afrocentric black woman. The terms black and African American will be used interchangeably for the duration of the paper. Also, the terms news editorial photographs, news photos and other variations of these terms will be used interchangeably in this work when references are made to the photograph, the primary unit of analysis.

OVERVIEW OF LITERATURE

Shepherd's[5] study is one of few that focuses solely on black women in commercial advertising. Although it does not examine the issue of colorism, it follows the traditional gender research approach of looking at the roles in which the women are depicted. Shepherd writes that black women have been portrayed in advertisements mainly in one of two character extremes--the gifted black woman, for example, seen as a singer or dancer; or as the dependable, faithful mother who usually is obese, matronly, and always serving her family in one or more domestic roles. Leading up to the time the study was published in 1980, black women rarely were shown in working roles in offices or in other professional roles when, at the time, they numbered 12 million or the largest minority group in the United States. The following reasons were cited for overlooking black women as a focus: 1) black women's physical characteristics contradicted the American ideals of beauty; and 2) black women had relatively limited buying power.

While black women may not have been the sole focus of media studies of colorism, this has not been the case for Blacks in general. Several studies have explored colorism of Blacks in advertising. The most recent was done by Keenan in 1996.[6] Keenan explored the possible contribution of advertising to colorism in black and mainstream advertising and editorial photographs from 1989 through 1994. A key finding was that Blacks in advertisements had lighter complexions and more Caucasian features than those in editorial photographs. In addition, black women in ads were lighter than black men. Results also revealed differences by magazine and product type.

Michael Leslie[7] investigated the changing image of Blacks in advertisements in *Ebony* magazine from late 1950 to late 1980. This analysis of three decades revealed significant differences in the mix of products advertised as well as in the aesthetic qualities of models used in the ads. Results also showed that while the Black Revolt of the 1960s "blackened" *Ebony's* ads, the fair-skinned, Eurocentric model had begun to re-establish itself as the aesthetic choice for *Ebony* advertising by the late 1980s.

Another study of *Ebony* ads in the early 1970s revealed an increase in black models and black products.[8] This trend suggested that to the degree to which ads reflect their desires, black consumers rejected Whites as individuals to emulate. In 1972, researchers found that models in *Ebony* advertisements for each of the years 1952 through 1968 showed trends toward Negroid features for males but not for females. Also, the facial appearance for both tended to be Caucasian except for skin color.[9]

A similar study conducted some 20 years later (1993) examined African-American racial identity as reflected in the popular media.[10] Three time periods of *Ebony* advertisements were analyzed: 1950-1964, 1965-1978 and 1979-1991, a total of 41 years. Results showed that, of all the Afrocentric images sampled (i.e., Afrocentric facial features, dark skin, and natural hair), only natural hair reflected a "bell-shaped" pattern across all three periods. The results also indicated that female models in advertisements, more likely than male models, were depicted with Eurocentric features. Male models were portrayed more often with Afrocentric features.

In sum, most of the aforementioned studies support the fact that colorism is a major influence in the portrayal of African Americans in advertising. All of these studies looked at Blacks in general, and did not isolate black women as the primary focus. The one study that does focus solely on black women looks at the roles in which black women are portrayed instead of colorism. Moreover, it appears no study has examined colorism of black women in news, as this study does. For these reason and others, the researcher believes their is ground for investigating this phenomenon. For example, Hughes and Hertel's[11] study indicated that colorism can influence several aspects of human life: mate selection, life chances, perceived self-worth, and attractiveness, among others. These findings offer additional ground for investigating colorism of black women in news photographs. Specifically the researcher seeks to discover what the occupational or public roles are in which Eurocentric-looking women appear? Are they seen more often in photos as successful professionals, entertainers, etc.? Are they seen more often as the mate selections of famous, wealthy, black men? Are comments about their physical appearance mentioned in the editorial content? This study examines these questions of colorism of black women in news photos. And, because "news-editorial content presumably reflects the real world,"[12] the following two hypotheses are offered:

> Hypothesis 1. There will be significantly more representations of black women as *primary newsmakers* on their own (e.g. professionals, politicians, etc.) and as *secondary newsmakers* (e.g. wives, girlfriends and companions of famous, wealthy men) whose appearance represents the typical *Eurocentric* facial type than for black women whose appearance represents the typical *Afrocentric* (black) facial type.
>
> Hypothesis 2. There will be more frequent usages of descriptors (e.g. beautiful, gorgeous, lovely, etc.) to describe physical attractiveness in texts that accompany photos of black women whose appearance represents the typical *Eurocentric* (white) facial type than for black women whose appearance represents the typical *Afrocentric* (black) facial type.

METHODS

A random sample of issues were examined from three publications lending themselves to vast national circulations: *Jet*, the only weekly, black news magazine, *Newsweek*, one of the leading, national general (white) news magazines, and the A-section of the *New York Times*, (Daily) a leading national newspaper. While neither *Jet* nor *Newsweek* is read exclusively by either race, the readership of *Jet* is more than 90% black, the readership of *Newsweek* is more than 90% white, and readership for *The New York Times* (Daily) is more than 80% white.[13]

It should be emphasized that the similarities and other features of compatibility among the three selected publications are not hindrances toward the purpose of this study, for the purpose is to examine colorism of black women in news photos rather than to compare the overall treatment given to black women in each individual publication.

The sample was drawn so as to include issues from the years 1965, 1975, 1985, and 1995. These years were chosen so as to encompass the time periods when black women, unlike white women, had finally begun to appear in periodicals on a regular basis. This contribution can be credited in large part to publisher John H. Johnson with the introduction of *Ebony* in 1945 and *Jet* in 1950.[14]

Six months from each of the four years were randomly chosen. Another random sample was conducted for each month to select one week from each of the six months chosen. Every effort possible was made to match *Jet* and *Newsweek* issues for a total of 48 issues sampled. There was one exception with *Jet* magazine. One issue that should have been part of the sample was not available. To solve this problem, another random sample of available issues was conducted to choose a replacement. Weekday issues of the *New York Times*--Monday through Friday--also were matched with the randomly selected weeks, for a total of 120 issues sampled for all three publications.

The editorial photo is defined as news and feature photos. As a general rule, all news and feature photos were coded and their accompanying texts (stories, captions, headlines). Stand-alone news and feature photos also were analyzed. No images of women of foreign descent or of women under age 18 born in the United States were analyzed. Wedding photos and other society-type regular features and mug shots also were not included as part of the sample.

For each photo, the following variables were recorded: 1) race of the individual; 2) whether the woman portrayed was a primary or secondary figure; 3) the woman's occupational (public) and familial or relational roles; 4) adjectives used in texts to describe looks; 5) hair type; and 6) facial type.

A primary figure is defined as a woman shown in a photo taken to

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highlight an event pertaining to her, with the text primarily focusing on her. A secondary figure is defined as a woman shown in a photo not taken to highlight an event pertaining to her. For example, she may be standing off to the side or mixed within the crowd. The text may mention her but does not really dwell on her to any extent.

The nine occupational or public roles were defined using modifications of Susan Miller's[15] definitions of roles. Those roles are professional, politician/public official, entertainer/socialite/celebrity, sports figure, activist/advocate, criminal, human interest, object, and other. Familial or relational roles include spouse (married, divorced, widowed); other female relative; companion or girlfriend to a man;s and lesbian/bisexual.

Leslie's[16] technique for judging colorism was modified and used to measure colorism. Unlike traditional studies of colorism in which the skin tones of models are measured, for example, using color formula guides such as the Pantone Matching System,[17] Leslie categorized aesthetic characteristics of models according to the following scheme: (1) facial type (Black African, Caucasian, other, combination); (2) clothing style (African, Euro-American, both); (3) hair style (natural, straightened [relaxed], combination). In this study, only facial types and hair types were recorded. The choices for facial types are white, African-American, mixed, and other; the choices for hair types are natural, straight or wearing hat/hair not showing. Facial types and hair types were recorded as two separate variables.

The white facial type is defined as faces with more typical white features than typical African-American ones such as thin lips, narrow noses, very light brown, fair or white complexions (e.g. actress Lena Horne, former mayor of Wash., D. C., Sharon Pratt Kelly, or former Secretary of Energy Hazel O'Leary). Eye color may even be one other than dark brown such as hazel or extremely light brown or gray (e.g. Former Miss America Vanessa Williams).

The African-American facial type is defined as those with more typical African-American features such as full lips and broad noses (e.g. actresses Whoopi Goldberg and Phyllicia Rashad, poet Maya Angelou or entertainer Oprah Winfrey). All skin tones shade are included. however. The key distinguishing criteria for this category is that no second-guessing of the race or ethnicity of the typically African-American-looking woman's face.

The mixed facial type is defined as that of having a combination of typically African-American and white facial features (e.g. actress Jayne Kennedy). And, the other facial type is defined as one that has more of an Asian, Hispanic, or Middle-Eastern type look (e.g.. Irene Cara, Jeanne Moutousammy-Ashe, wife of tennis legend, Arthur Ashe.).

Natural hair types include afros, natural hair cut close to the head, braids and dredlocks. Straight hair types include naturally straight hair or hair chemically altered in any way (curly perm, full curls, and wigs with any of these looks.).

Photos and texts were evaluated by four coders, two black women and two white women. Disagreements were resolved through discussion. Because hair styles changed considerably from decade-to-decade for the four years under investigation, the decision was made to use the individual's facial type as the measurement of colorism in the final analysis. Intercoder reliabilities for the facial types were calculated using the Holsti formula.[18] Reliabilities for all four coders averaged .86 (.83 for black coders and .93 for white coders).

RESULTS

A total of 120 issues were sampled for all three publications. This yielded a total of 702 photos, of which 418 (59.5%) represent images of black women and 284 (40.5%) represent those of white women (N=409 for usable images).

Representations of facial types overwhelmingly were recorded as African-American (89%), whereas the white, mixed and other facial types combined represented only 11 percent of individuals coded in the photos.

Cross tabulations were conducted to explore the predicted relationships between variables for each of the four hypotheses. A five percent significance level was used throughout.

The first hypothesis predicted that there would be significantly more representations of black women as *primary newsmakers* on their own (e.g. professionals, politicians, etc.) and as *secondary newsmakers* (e.g. wives, girlfriends and companions of famous, wealthy men) whose appearance represents the typical *Eurocentric* facial type than for black women whose facial type is typically *Afrocentric*. This hypothesis was marginally supported with ($X^2 = 2.93$, df = 1, $p = .08$).

The second hypothesis predicted that there would be more frequent usages of descriptors (e.g. beautiful, gorgeous, lovely, etc.) to describe physical attractiveness in texts that accompany photos of black women whose appearance represents the typical *Eurocentric* (white) facial type than for black women whose appearance represents the typical *Afrocentric* (black) facial type. This hypothesis was supported ($X^2 = 19.32$, df = 2).

DISCUSSION

As mentioned previously in this paper, the colorism phenomenon has been a popular subject of inquiry in the study of African-American portrayal in advertising. Most of these studies have concluded that the "white-looking" model is more popular than the "black-looking" (Negroid-featured) model. Dominant as this trend may be as a practice, many critics claim advertising is not realistic in its representation of the way Black America really looks.[19] Then, perhaps, the findings in this study may even be lending support to this criticism. Again, the number of representations of black women in news editorial photos in this sample overwhelmingly were recorded as being African-American (89%), hence the marginal support for Hypotheses 1.

Although individuals were recorded mostly as having the African-American facial type, it is interesting to note that Hypothesis 2--which examined the usage of descriptors used in texts to refer to black women with the Eurocentric facial type--were supported much more strongly, despite the fact that just 11% of the facial types were used in the cross tabulation. This clear-cut finding suggests, perhaps, that journalists, like advertisers, can be influenced by the colorism phenomenon.

The author has pondered what the results would have been if some procedures been conducted differently in this investigation. For one, would the percentage of African-American facial types had been as high if, for example, Keenan's[20] method for judging colorism had been applied? Keenan measured complexion on a five-point scale using the Pantone Matching System (SMS) formula guide. One has to assume that using this method would not have made a difference given the fact that Keenan even reported that "blacks found in magazine advertisements appeared to be more Caucasian looking than those in editorial photographs."[21] Therefore, it can be concluded from this study that additional evidence now exists to support Keenan's finding concerning colorism of blacks in editorial photographs.

The author also ponders what the results would have been had the study analyzed only publications targeted to the dominant black audience instead of a mixture of publications targeted to dominant black and white audiences. Although it is assumed that this approach to sampling would yield an even larger representation of news photos of black women produced by black journalists, it is not assumed that results would reveal a greater degree of colorism of black women in the photographs. It remains to be proven.

Another approach to examining colorism in news photographs also could be one that narrows the focus to that of analyzing images of elected or appointed black men and women leaders. The basis for this analysis would be the claim documented in the book, *The Color Complex,* that light skin and fine features are symbols of high status and success (See Appendix, Table 1).[22]

Clearly, future analyses of colorism of Blacks in news editorial photographs should be conducted by either repeating the methods used in this study or by conducting studies using modifications of these methods. Researchers may choose to raise any number of questions in exploring this phenomenon. However, based on the findings from previous studies and this one, future inquiries must offer the following hypothesis: There will be significantly fewer representations of African Americans whose appearance represents the typical Eurocentric phenotype than those representing the typical African-American phenotype. Why? Because, again, news, unlike advertising, presents a more realistic view of the way Black America looks.

Appendix

TABLE 1

ELECTED OR APPOINTED BLACK LEADERS

(What they all have in common is light skin.)

Robert Weaver, secretary of the Department of Housing and Urban Development, the first black U.S. cabinet member (1966)

Edward W. Brooke, the first black senator since Reconstruction (1966)

Thurgood Marshall, the first black Supreme Court justice (1967)

Maynard Jackson, the first black mayor of Atlanta (1974)

Andrew Young, the first black U.S. delegate to the United Nations (1976)

Patricia R. Harris, the first black woman cabinet member (1976)

Ernest Morial, the first black mayor of New Orleans (1977)

David Dinkins, the first black mayor of New York (1989)

Douglas Wilder, the first black governor of Virginia (1989)

General Colin L. Powell, the first black chairman of the Joint Chiefs of Staff (1989)

Ron Brown, the first Black man to chair the Democratic National Committee, later appointed Secretary of Commerce (1989, 1992, respectively)

Sharon Pratt (Dixon) Kelly, the first black woman mayor of a major city, Washington, D.C. (1990)

***Hazel O'Leary,** the first black woman Department of Energy Secretary (1992)

*Denotes additions made by the researcher

Taken from The Color Complex, pp. 36-37.

NOTES

[1] Kathy Russell, Midge Wilson, and Ronald Hall, *The Color Complex* (Orlando, Florida: Harcourt Brace Jovanovich, 1992), 2.

[2] Russell, Wilson, and Hall, *The Color Complex*.

[3] Russell, Wilson, and Hall, *The Color Complex*.

[4] Michael Hughes & Bradley R. Hertel, "The Significance of Color Remains: A Study of Life Chances, Mate Selection, and Ethnic Consciousness among Black Americans," *Social Forces*, 68 (June 1990): 1105-1120.

[5] Juanita M. Shepherd, "The Portrayal of Black Women in the Ads of Popular Magazines," *The Western Journal of Black Studies* 4 (1980): 179-182.

[6] Kevin L. Keenan, "Skin Tones and Physical Features of Blacks in Magazine Advertisements," *Journalism Quarterly* 73 (winter 1996): 905-912.

[7] Michael Leslie, "Slow Fade to ?: Advertising in *Ebony* Magazine, 1957-1989," *Journalism Quarterly*, 72 (summer 1995): 426.

[8] Michael K. Chapko, "Black Ads are Getting Blacker," *Journal of Communication*, 26 (autumn 1976): 175.

[9] Trends in Appearance of Models in *Ebony* Ads over 17 Years," *Journalism Quarterly*, 49 (autumn 1972): 547.

[10] Nathaniel Van Goodlow, "African-American Identity from 1950-1991: A Content Analysis," (Ph. D. diss., California School of Professional Psychology, 1993), *DAI-A* 54/01, p. 329.

[11] Hughes and Hertel, "The Significance of Color Remains: A Study of Life Chances, Mate Selection, and Ethnic Consciousness among Black Americans."

[12] Guido E. Stempel III, "Visibility of Blacks in News and News-Picture magazines," *Journalism Quarterly* 48 (summer 1971): 337-39; G.L. Ortizano, "Visibility of Blacks and Whites in Magazine Photographs," *Journalism Quarterly* 66 (autumn 1989): 718-21.

[13] Readership for sampled publications to be sampled by race from Mediamark Research, Inc., *Magazine Total Audiences Report* (Fall 1993), *Jet:* 93.2% black, 6.2% white; *Time:* 86.4% white, 9.2% black; *New York Times:* 85.4% white, 12.0% black (Fall 1992).

[14] John H. Johnson, *Succeeding Against the Odds*, (New York: Amistad Press, Inc., 1992), 160, 206.

[15] Susan H. Miller, "The Content of News Photos: Women's and Men's Roles." Journalism Quarterly 52 (spring 1975); 70-75.

[16] Leslie, Slow Fade to ?: Advertising in *Ebony* Magazine, 1957-1989", 429.

[17] Keenan, "Skin Tones and Physical Features of Blacks in Magazine Advertisements."

[18] Roger D. Wimmer and Joseph R. Dominick, *Mass Media Research* (Belmont, CA: Wadsworth, 1994), 79.

[19] Karen Grigsby Bates, "The Color Thing," *Essence*, September 1994, 79-80, 132-35; J. Clinton Brown, "Which Black is Beautiful?" *Advertising Age*, 1 February 1993, 19.

[20] Keenan, "Skin Tones and Physical Features of Blacks in Magazine Advertisements."

[21] Keenan, "Skin Tones and Physical Features of Blacks in Magazine Advertisements."

[22] Russell, Wilson, and Hall, *The Color Complex* .

Computer-Assisted Reporting Resources in Newsrooms, 1994-96

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Computer-Assisted Reporting Resources in Newsrooms in 1994-96

ABSTRACT

This paper focuses on trends in use of personal computer hardware and software for computer-assisted reporting (CAR) at U.S. daily newspapers over a three-year period ending in early 1996. Findings revealed that the leading hardware included Pentium processors, DOS/Windows, and use of more than one CD-ROM drive. Software category leaders were Microsoft Word, Microsoft Excel, Borland Paradox, MapInfo, SPSS, askSam, Procomm Plus, and Visual Basic. The most desired additions were hardware upgrades or new hardware and analytical mapping software.

Computer-Assisted Reporting Resources in Newsrooms in 1994-96

Personal computers have altered the practice of investigative journalism and are beginning to have a significant impact on routine reporting as well. This statement seems particularly applicable to the in-depth projects and other public records newsgathering tasks of journalists, not just the routine production and distribution of information. The types of daily breaking news, investigations, and special projects being published and broadcast by news organizations have changed in recent years. The speed of gathering what was once hard-to-access information has also improved. The breadth and depth of public information has increased. Even the type of information used for these stories is sometimes different. In fact, there are numerous technological effects that can be attributed to the use of computers in newsgathering (Garrison, 1996a; Garrison, 1995a; Houston, 1996; Paul, 1996; Ross & Middleberg, 1997).

Elliot Jaspin, a Cox News Service Washington bureau editor and founder of the National Institute for Computer-Assisted Reporting (NICAR), observed that he somewhat serendipitously discovered the benefits of computers while working on a story for the *Providence Journal.* It changed the way he looked at reporting, he said. Jaspin, recognized as a founder of computer-assisted reporting (CAR), argued that the computer has modified how reporters look at public information, such as records, in this decade. With computers, public records are more interesting, he feels. Jaspin also said that there are "much better stories" brought to publication through the use of computers (Jaspin, 1994).

Other journalists agree with Jaspin. Dave Davis, a Cleveland *Plain Dealer* reporter, stated, "I think one of the things it [the computer] has done is taught me to be aware, to look out for opportunities when they come knocking" (Cline, 1994, pp. 13-15). *Los Angeles Daily News* reporter David Bloom has stated that building his own databases for routine beat stories has made significant differences in how he approaches his work. "Spreadsheets can be incredibly useful in lots of ways for ongoing beat coverage, involving fairly small investments of time, as well as for understanding a few numbers on … deadline" (Bloom, 1994, p. 11). He recommended a gradual approach that leads to data that cannot be obtained in electronic form elsewhere. This, he contended, has changed how he handles his routine reporting on public affairs beats, such as law enforcement, city hall, and politics.

There are two approaches to computer-assisted reporting. CAR includes (a) both online-based newsgathering that uses specialized commercial services and Internet-based services, such as the World Wide Web, and (b) database-oriented analysis using existing and originally created databases from both the public and private sectors (Garrison, 1995a; Garrison, 1995b; Houston, 1996). CAR has been increasingly adopted by reporters as subjects have dictated it (Garrison, 1996a).

Rose Ciotta, CAR director at the *Buffalo News* and a member of the Investigative Reporters and Editors board of directors, recently wrote that journalists "are tapping into data and producing high-impact stories on topics ranging from criminals among nursing home workers and school teachers to unsafe elevators and the influence of political contributions" (Ciotta, 1996, p. 36). Ciotta noted that a number of CAR experts have acknowledged the revolution in investigative and other news reporting techniques occurring in this decade.

The effects of the revolution seem clear: Reporters save time, but gather more information. In doing so, reporters also save their companies money while they are more productive (Garrison, 1996e; Ruberry, 1996). It is one of the few areas in newsrooms in this decade where jobs are being created (Ciotta, 1996). Interest in CAR has grown rapidly, as has recognition of its effectiveness through numerous high-level awards since 1990 (Reavy, 1996a). One of the reasons for these computer-driven benchmark changes, simply stated, is that American society has changed. Business has been equally, perhaps even more, influenced by personal computing. Education, government, and almost all other segments of modern America have been affected by computing. Governments, for example, have kept records on computers for almost a half century, but the extent of the electronic record keeping has geometrically increased in the past decade (Houston, 1996; Garrison, 1995a).

Thus, it seems natural that journalists would begin using computers more often to study those records and to report about newsworthy information contained in them. The modern tradition of investigative journalism using public information has simply extended its reach with these new tools. Computer-based journalism is also viewed as a way to revitalize the newspaper industry and "restore public confidence in journalism," one media analyst recently observed (Foley, 1996, p. 8). Taking the issue further, another CAR expert said the revolutionary use of CAR is a "matter of survival" (Ruberry, 1996, p. F-2).

Brant Houston (1996), managing director of the National Institute for Computer-Assisted Reporting since 1994, has argued that computers change the way journalists think about their stories – computers require users to be more methodical and somewhat less intuitive in the beginning. But, he noted, the results are frequently better reporting skills and better stories. "Most important, computer-assisted reporting is at the heart of good public service journalism" (p. 6).

Because of the growing importance of CAR in newsrooms, new attention is being given to on-the-job training and education (Garrison, 1996a). Most CAR training focuses on use of basic tools, such as operating systems, multimedia, spreadsheets, the Internet, database management, mapping, statistics, nine-track data tape drives, and programming (Reavy, 1996b). Houston (1996) has noted that there are three basic CAR tools – spreadsheets, database managers, and online services. But he also said that statistical software and mapping software are important categories that are rapidly growing in popularity and value. "Computer-assisted reporting uses other tools, some of which are complex and some of which are merely handy," Houston explained (p. 7). Feola (1995) reduced CAR basics to two areas, arguing that spreadsheets and online research services are the most important starting points for CAR.

Given the growing use and significance of computer tools in investigative reporting and other newsgathering, it is necessary to learn more about the extent of their use in newsrooms. Which categories of computer tools are commonly used? Which tools are most often used? Specifically, this study sought to determine the trends in use of hardware and software often critical to information gathering and analysis in investigative journalism.

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RESEARCH QUESTIONS AND FOCUS

The present study focused on use of basic CAR hardware and software tools used during a three-year period December 1993- February 1994, December 1994-March 1995, and January to March 1996. For practical purposes, the project conducted in 1993-94 will be referred to as "1994." The project conducted in 1994-95 will be referred to as "1995." Generally, the study sought to answer these research questions:

1. What were the most-often installed hardware configurations used for CAR in 1996? During the three-year period from 1994 to 1996?

2. What were the most-often installed software configurations for CAR in 1996? During the three-year period from 1994 to 1996?

3. What were the most-wanted new hardware tools for CAR in 1995 and 1996?

4. What were the most-wanted new software tools for CAR in 1995 and 1996?

THE STUDY METHOD

An on-going national research project studying the development and use of CAR has been underway since 1993. This paper analyzes findings from three national surveys:

- During the last week of December 1993, questionnaires were mailed and during January 1994 data were collected from a population of 514 Sunday and daily newspapers across the United States. A circulation minimum of 20,000 on Sundays was the minimum for inclusion. One follow-up mailing was sent in February 1994 and returned in February and March 1994.

- During the last week of December 1994, data collection began with a mailing to 510 Sunday and daily newspapers. Again, a circulation minimum of 20,000 on Sundays was required for inclusion. Two follow-up mailings were sent. The first follow-up was mailed in early February 1995 and the second was sent in mid March 1995.

- In early January 1996, the most recent mail survey was conducted with a mailing to 510 daily newspapers. Two follow-up mailings were used to increase participation.

Each follow-up mailing resulted in a five to ten percent increase in response rates in each year and specific figures are available from the author. Since this study involved surveying an entire population, significance tests are not reported. Circulation figures were obtained from the latest editions of the *Editor & Publisher International Year Book* (Anderson, 1994; Anderson, 1995; Anderson, 1996).

Editors were asked either to complete the questionnaire themselves or to forward it to the person in charge of online news research and/or CAR. In some cases, two or three persons completed portions of the questionnaires. Questionnaires were developed from discussions and interviews during the Investigative Reporters and Editors and NICAR conferences at Raleigh, N.C., in 1993, at San Jose, Calif., in 1994, and Cleveland in 1995. The instruments consisted of four sets of questions, including institutional and personal information, CAR tools, online news research, and field reporting use of computers. Data were processed using the Statistical Package for the Social Sciences for Windows, Version 6.1.3 (Norušis, 1995).

FINDINGS

In 1994, a total of 208 responses were received, a rate of 41 percent. In 1995, 287 responses were received, a rate of 56 percent. In 1996, 233 responses provided a rate of

45 percent. Table 1 shows general demographics of respondents in each year. Respondents in each of the three groups were typically managing editors, CAR supervisors or directors, news researchers, or reference supervisors.

What were the most-commonly installed hardware configurations used for computer-assisted reporting?

Newsrooms were upgrading hardware during the period studied. While the upgrades may have had other purposes – such as improved production – there was a potential impact on CAR and investigative reporting. Some news organizations have replaced dedicated word processing systems with PC-based networks, but others upgraded older PCs already in use. The current major overhaul of the newsroom computing systems at the *Philadelphia Inquirer* that began with hardware and software planning in late 1995 and continued with installations this spring is just one example (Borowski, 1997). As shown in Table 2, about one-third of respondents used Pentium-type processors in 1996, a growth of 33 percent since the processor was introduced in 1994. As upgrades occurred, the proportions of newsrooms using other processors dropped. The number of newsrooms using Macintosh computers remained flat at about nine percent for each of the three years.

Operating systems have gradually been converted from DOS to a Windows/DOS configuration used by 51 percent of newsrooms in 1996 and more than double the proportion two years earlier. Windows 95 use seems to be growing slowly.

The number of newsrooms using CD-ROM drives has also increased from 1994 to 1996. In 1994, only 40 percent used one or more CD-ROM drives. That figure grew to 58 percent in 1995 and to 62 percent in 1996. It is also interesting to note that the proportion using one CD-ROM drive has dropped while the proportion using two or more has increased dramatically.

Other hardware changes include modem upgrades to 28.8 Kbps (34 percent in 1996 and 16 percent in 1995), while another large group used 14.4 Kbps (35 percent in 1996 and 35 percent in 1995). Digital tape was the most widely used storage medium at 25 percent in 1996, up slightly from 24 percent in 1995. The mean hard drive capacity of computers used for CAR was 1.66 GB, but those in use ranged from 60 MB to 1,600 GB. A year earlier, mean hard drive capacity was 1.06 GB, ranging from 20 MB to 1,000 GB.

What were most-commonly installed software configurations for computer-assisted reporting?

There are a considerable number of software categories used for CAR – everything from word processing to advanced statistical packages. For this study, eight major software categories have been tracked for the past three years. There is general stability in the category leaders over the three years, but some shifts were noted. In general, Microsoft Office products are gaining wider acceptance as basic CAR tools, Table 3 data show.

Microsoft Word has become the preferred word processor at 34 percent in 1996, replacing XyWrite at a number of newspapers. Similarly, Microsoft Excel has not only maintained its leadership role, but it increased its dominance among spreadsheet programs at 43 percent. Borland Paradox, a long-time favorite among relational database managers and sold to Corel in 1996, continued its popularity at 24 percent. Microsoft FoxPro was also widely used at 21 percent. Microsoft Access, a relatively new relational database program developed for Windows in 1993, grew to a base of 14 percent.

Among more specialized and high-end CAR software, *nonuse* remained the most significant finding. High-end products include analytical mapping, statistical packages, text database managers / personal information managers, development and programming software, and communications software. However, the amount of newspapers not using more advanced CAR software was gradually declining.

MapInfo (14 percent) was the preferred analytical mapping tool in 1996, but 74 percent of respondents did not use mapping tools. This was a decline from 83 percent in 1994. SPSS grew slightly in its dominance as the preferred statistical package at 9 percent in 1996. However, nonuse of statistics programs remained steady at 87 percent, slightly higher than the 86 percent recorded in 1994 and 1995. askSam continued to be the leading text database management tool at 8 percent and use of text database managers and PIMs has declined from 93 percent in 1994 to 81 percent in 1996.

While most newspapers did not use development tools for preparing database front ends or other newsroom applications, the growth in nonuse has flattened in the past two years at 85 percent. Visual Basic is the leading tool among users, growing slightly from 2 percent in 1994 to 8 percent in 1996.

The dominance of Procomm Plus as the preferred non-proprietary access tool to online resources has grown steadily over the past three years. Starting at 31 percent in 1994, it has increased to 35 percent in 1995 and 39 percent in 1996.

What were most-wanted new hardware and software tools for using computer-assisted reporting in the past two years?

The most important new CAR resource that respondents listed was a hardware upgrade or new hardware (see Table 4). This improvement was noted by 22 percent of newspapers. Among software and services, newspapers sought mapping software (7 percent in 1996) and improved Internet access or new Internet access (6 percent).

CONCLUSIONS

Use of hardware and software tools for CAR has stabilized somewhat in the past three years. These hardware and software products have become part of the basic "tool kit" of most journalists who use CAR. The stability has developed because of two processes taking place at the same time. First, the computer software industry is consolidating in some ways. Earlier in the decade, there were more choices and more vendors for software products and services. Some of these have failed and some have been acquired by other companies and evolved into their current versions. Products have survived because of their success in accomplishing the jobs they were designed to do. Like their counterparts in the business world who use database-oriented software, journalists have gradually determined that certain products are more suitable than others are and have gravitated to them.

Hardware manufacturers have also evolved, but the basic CAR hardware tools have not changed remarkably from 1994 to 1996. There were several notable changes in this period, nevertheless, such as the introduction of the Pentium processor, widespread introduction and use of multi-media tools, such as CD-ROM drives, the increase in hard drive capacities, and the increase in the base amount of random access memory. Aside from these improvements, the basic hardware configuration in 1996 was not that different from that in 1994. Thus, there is general stability in what the hardware can do, but improvement in how it does that job each year.

Second, journalists were going through their own decision-making processes involving hardware and software products. Corporate decisions were filtering down to newsrooms that lead to some standardization. For example, several newspaper groups have adopted the Microsoft Office suite "Professional" edition for newsroom PC networks, resulting in use of Word, Excel, and Access for CAR by both those experienced and those just beginning to use CAR.

There was notable growth in entry-level users over the past three years. More mid-size and small dailies were using CAR in 1996 than in 1994 or 1995. The increases in software and hardware use each year point to this change.

However, while there was growth in "entry-level" use of such programs as spreadsheets and relational databases, there was little growth in use of more advanced CAR tools, such as statistical packages, analytical mapping programs, and programming-development tools. This is clearly the next generation of growth, a second-level approach to the development of CAR and, perhaps, investigative journalism in general. Furthermore, journalists have yet to discover utility database programs, such as personal information managers and text database managers. The nonuse of these tools shows advanced CAR tools and certain utility software categories remains one of the study's significant findings. Because of the lack of use and lack of expertise in how to use these advanced CAR tools, there will be need for training and continuing education among journalists on the job as well as those entering the job market for the first time. Some professional organizations and universities are trying to meet the need, but the effort is only in its beginning stages.

There seems to be indicators pointing toward continued growth in use and improvement in the sophistication of CAR. The "wish lists" data showing the desire to upgrade or replace older hardware and the expressed need for advanced software tools, such as analytical mapping, suggest movement in this direction. There was also indication for continuing training and education with these new tools.

The study falls short in several respects and deeper probing into the subject matter may be needed. It would be helpful to analyze data by looking at characteristics of the newspapers, such as size, region, available CAR resources, computer literacy levels of journalists involved, and availability of data, for instance. There were other weaknesses. This study did not include wire services involved in CAR, nor did it look at specialty publications, such as news magazines, that were readily using CAR in their investigative reporting. Regardless, it is evident in these data that the availability of CAR hardware and software tools have grown and continue to be adopted in newsrooms. It would also be valuable to look at broadcast news media since it is apparent that an increasing number of local news organizations and network news teams were producing investigative projects that used numerous CAR tools.

TABLE 1: Respondent Demographics, 1994-96

Category	1994	1995	1996
Circulation mean	121,361	113,735	105,241
Circulation by region			
East	18%	18%	22%
South	36	33	34
Midwest	28	27	26
West	17	22	19
Respondent CAR role			
Editor, supervisor	55%	20%	40%
CAR supervisor	6	27	21
Investigations, projects	9	9	6
Other	40	44	33

TABLE 2: Hardware, 1994-96

Type of hardware	1994		1995		1996		Percentage Change 1994-96
Processors							
586 Pentium	2	1.0%	7	2.4%	78	33.5%	+32.5%
486	64	30.8	99	34.5	69	29.6	-1.2
386	21	10.1	23	8.0	10	4.3	-5.8
286 or 8088	4	1.9	6	2.1	1	0.4	-1.5
Macintosh	18	8.7	28	9.8	21	9.0	+0.3
Other	31	14.9	50	17.4	1	0.4	-14.5
Missing / DK / none	68	32.7	74	25.8	53	22.7	-10.0
Operating Systems							
DOS/Windows	45	21.6%	121	42.2%	118	50.6%	+29.0%
Macintosh	8	3.8	13	4.5	19	8.2	+4.4
Other	10	4.8	45	15.7	11	4.7	-0.1
DOS only	30	14.4	16	5.6	4	1.7	-12.7
OS/2	5	2.4	3	1.0	6	2.6	+0.2
Unix	0	0.0	2	0.7	0	0.0	0.0
None / DK / Missing	110	52.9	87	30.3	50	21.0	-31.9
CD-ROM Drive Use							
One in newsroom	74	35.6%	89	31.0%	64	27.5%	-8.1%
Two or more	8	3.8	78	27.2	80	34.3	+30.5
Other	0	0.0	5	1.7	8	3.4	+3.4
None / Missing	126	60.6	115	40.1	81	34.8	-25.8

TABLE 3: Software Use, 1994-96

Software category	1994		1995		1996		Percentage Change 1994-96
Word Processors							
Other	36	17.3%	71	24.7%	31	13.3%	-4.0%
XyWrite	48	23.1	67	23.3	48	20.6	-2.5
Microsoft Word	12	5.8	49	17.1	80	34.3	+28.5
Corel WordPerfect	15	7.2	35	12.2	23	9.9	+2.2
Lotus Word Pro	5	2.4	5	1.7	2	0.9	-1.5
Missing / none	92	44.2	60	20.9	49	21.0	-23.2
Spreadsheets							
Microsoft Excel	35	16.8%	74	25.8%	99	42.5%	+25.7%
Lotus 1-2-3	34	16.3	49	17.1	38	16.3	0.0
Corel Quattro Pro	27	13.0	41	14.3	27	11.6	-1.4
Other	12	5.8	32	11.1	8	3.4	-2.4
Missing / none	100	48.1	91	31.7	61	26.2	-21.9
Database Managers							
Corel Paradox	41	19.7%	57	19.9%	55	23.6%	+3.9%
Claris Filemaker Pro	---	----	---	----	4	1.7	----
Microsoft FoxPro	25	12.0	51	17.8	48	20.6	+8.6
Other	22	10.6	42	14.6	8	3.4	-7.2
Microsoft Access	2	1.0	13	4.5	33	14.2	+13.2
Borland dBase	10	4.8	8	2.8	2	0.9	-3.9
Lotus Approach	----	----	5	1.7	2	0.9	-0.8*
Missing / none	108	52.0	111	38.7	81	34.7	-17.2
Analytical Mapping							
MapInfo	10	4.8%	35	12.2%	32	13.7%	+8.9%
Atlas GIS	16	7.7	22	7.7	18	7.7	0.0
Other	9	4.3	12	4.2	10	4.3	0.0
Missing / none	173	83.2	218	76.0	173	74.3	-8.9
Statistical Packages							
SPSS	15	7.2%	21	7.3%	22	9.4%	+2.2%
Other	10	4.8	10	3.5	2	0.9	-3.9
SAS	5	2.4	8	2.8	6	2.6	+0.2
Missing / none	178	85.6	248	86.4	203	87.1	+1.5
Text Databases / PIMs							
askSam	4	1.9%	25	8.7%	18	7.7%	+5.8%
Other	10	4.8	24	8.4	13	5.6	+0.8
Lotus Organizer	1	0.5	9	3.1	5	2.1	+1.6
Lotus Smartext	----	----	2	0.1	3	1.3	+1.2
Microsoft Schedule+	----	----	----	----	5	2.1	-----
Missing / none	193	92.8	228	79.1	189	81.1	-11.7

TABLE 3: Software Use, 1994-96 (continued)

Software category	1994		1995		1996		Percentage Change 1994-96
Development Tools							
Other	13	6.3%	19	6.6%	5	2.1%	-4.2%
Microsoft Basic	2	1.0	12	4.2	7	3.0	+2.0
Microsoft Visual Basic	4	1.9	9	3.1	18	7.7	+5.8
Borland C++	----	----	4	1.4	5	2.1	+0.7*
Borland Turbo Pascal	----	----	1	0.4	0	0.0	-0.4*
Missing / none	189	90.9	242	84.3	197	84.5	-6.4
Communications Packages							
Procomm Plus	64	30.8%	101	35.2%	90	38.6%	+7.8%
Other	25	12.0	49	17.1	39	16.7	+4.7
Crosstalk	11	5.3	14	4.9	5	2.1	-3.2
Delrina Comm Suite	----	----	----	----	4	1.7	-----
Hyper Access	----	----	----	----	3	1.3	-----
Windows Terminal	3	1.4	14	4.9	16	6.9	+5.5
SmartCom	11	5.3	10	3.5	9	3.9	-1.4
Missing / none	90	43.3	99	34.5	67	28.8	-14.5

*Percent change from 1995 to 1996 only.

TABLE 4: First Choice for New CAR Tools, 1995-96

Category	1995 Freq.	Percent	Freq.	1996 Percent	Percentage Change 1995-96
New hardware / upgrade	69	24.0%	51	21.9%	-2.1%
Other software	----	----	9	3.9	-----
Mapping software	17	5.9	16	6.9	+1.0
Internet access or improved access	15	5.2	13	5.6	+0.4
Any database package	8	2.8	15	6.4	+3.6
Network and server	7	2.4	4	1.7	-0.7
Databases, storage	9	3.1	5	2.2	-0.9
Visual Basic	5	1.7	0	0.0	-1.7
Spreadsheet upgrade	9	3.1	0	0.0	-3.1
Online service	4	1.4	2	0.9	-0.5
Training	----	----	4	1.7	-----
Statistics software	----	----	8	3.4	-----
Use resources better	4	1.4	0	0.0	-1.4
Other	21	6.9	5	2.1	-4.8
Did not respond	115	40.1	101	43.3	+3.2
Totals	287	100.0	233	100.0%	

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